

No. 11809

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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MISSION CORPORATION, a corporation,  
Appellant,

vs.

WILLIAM G. SKELLY,  
Appellee.

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Transcript of Record  
IN FOUR VOLUMES  
VOLUME II  
Pages 259 to 557

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Upon Appeal from the District Court of the United States  
for the District of Nevada

FILED

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PAUL P. O'BRIEN,  
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Upon Appeal from the District Court of the United States  
for the District of Nevada

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[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES F. KRUG

State of Nevada,  
County of Washoe—ss.

Charles F. Krug, being first duly sworn, deposes and says:

I was designated by Mr. David T. Staples, president of Mission Corporation, to take charge of mailing the notice of meeting and proxy statement relating to the meeting of stockholders of the Corporation called to be held on December 6, 1947, for the purpose of considering and taking action on a proposed merger agreement.

Mailing of such material commenced on November 12, 1947, and was completed on November 14, 1947. Such material was sent by regular second-class mail from New York to all the stockholders who reside at various points throughout the United States.

In Witness Whereof, I have hereunto set my signature [241] this 21st day of November, 1947.

/s/ CHARLES F. KRUG.

Subscribed and sworn to before me this 21st day of November, 1947.

[Seal] R. Z. HAWKINS,  
Notary Public in and for the County and State  
Aforesaid.

My commission expires Nov. 23, 1949.

Service admitted Nov. 21, 1947.

/s/ JOHN P. THATCHER.

[Endorsed]: Filed Nov. 21, 1947. [242]

[Title of District Court and Cause.]

AFFIDAVIT OF CALEB S. LAYTON

State of Delaware,  
New Castle County—ss.

Be It Remembered, that on this 18th day of November, A.D. 1947, personally appeared before me, the subscribed, a Notary Public in and for the State and County aforesaid, Caleb S. Layton, who, being qualified by me in due form of law, did depose and say:

I am a member of the Bar, practicing in the City of Wilmington, Delaware, and am admitted to practice in all the Courts of Delaware, including the District Court of the United States for the District of Delaware, and am also admitted to practice in the Supreme Court of the United States. I was admitted to the Bar in the year 1910 and am a member of the firm of Richards, Layton & Finger, 4072 du Pont Building, Wilmington, Delaware.

I have in my practice had extensive experience with the Delaware Corporation Law for a period of over thirty years, have been counsel in numerous causes involving [243] the interpretation of the Delaware Corporation Law and have been for many years, and still am, called upon very frequently to give opinions upon the meaning of the various provisions of the said Statute. For a period of several years I was a member of the Corporation Committee of the New Castle County Bar Association which had charge of Amendments to the

General Corporation Law of this State and their presentation to the General Assembly of this State and subsequently became Chairman of said Committee and continued as such Chairman for a period of at least eight years. This work involved the drafting of Amendments to the General Corporation Law, the submission of them to the Bar Association and, upon receiving the approval of the Bar Association, the introduction of appropriate Bills into the General Assembly and the explanation of the purposes of the Amendments before joint Sessions of the appropriate Committees and explanations, likewise, before the two Houses of the General Assembly. I was chairman of the Corporation Committee when the substantial revision of the Delaware Corporation Law was made in the year 1927 and have from time to time been a member of the Corporation Committee of the Delaware State Bar Association after its formation and was a member of the Committee for the 1947 Session of the General Assembly. I have been called upon to testify numerous times in Courts of other jurisdictions with respect to the proper construction of the provisions of the Delaware Corporation Law involved in such cases.

I have read the complaint in the above stated cause and I have also studied the Agreement of Merger [244] dated October 18, 1947, between Sunray Oil Corporation, Pacific Western Oil Corporation and Mission Corporation and I have also studied the notice of meeting and proxy statement of Sunray Oil Corporation to which the said Merger

Agreement is attached as Exhibit A. I have also studied the notice of meeting and proxy statement of Mission Corporation to which the Agreement of Merger is likewise attached as Exhibit A. I have also examined the letters to Stockholders, dated November 6, 1947, of Mission Corporation, Pacific Western Oil Corporation and Sunray Oil Corporation, the latter letter being addressed to Stockholders of Pacific Western Oil Corporation. I have examined with care the averments of Paragraph XV of the above complaint, especially in so far as the contentions therein stated may be directed to the interpretation and meaning of the Corporation Law of this State.

Sub-paragraph (b) of Paragraph XV of the complaint avers that the Agreement of Merger states only a part of the terms and conditions of the merger and the mode of carrying the same into effect. I, of course, do not assume to deal with this averment in so far as it may involve the meaning of the Nevada Corporation Law. I assume, however, that it may be contended that the objection may likewise apply to the Merger Agreement in respect of Sunray Oil Corporation and Pacific Western Oil Corporation, which are incorporated under the laws of the State of Delaware.

After a careful examination of the Agreement of Merger and of the proxy statements I am of the opinion that this objection is without substance so far as the [245] Delaware Corporation Law is concerned. Perhaps a statement of the general purpose of Section 59 of the Delaware Corporation

Law, which confers the power of merger or consolidation, may be helpful. Upon an examination of the third paragraph of Section 59, which is the paragraph conferring power upon Delaware corporations to consolidate or merge with foreign corporations, it will be observed that the provisions of this paragraph are substantially the same as the provisions relating to merger of Delaware corporations alone. The statute is a broad and comprehensive one and essentially contemplates the coalescence of the constituent corporations into the resultant or surviving corporation. It has been held in this State that every merger involves a sale of assets.

*Argenbright v. Phoenix Finance Company,*  
21 Del. Ch. 288, 292.

Our Supreme Court has held that the statute is to receive a liberal construction. In *Federal United Corporation v. Havender*, 11 Atl. (2d) 331, at page 338, our Supreme Court said:

“The Catholic quality of the language of the merger provisions of the law negatives a narrow or technical construction if the purpose for which they were enacted is to be accomplished.”

The statute contemplates the absorption of the corporate being as well as corporate assets into the corporation surviving the merger. Under Section 60 of the Delaware Corporation Law the separate existence of the constituent corporations, except the corporation surviving the merger, ceases upon the



effective date of the Merger Agreement and I assume that the same thing may be true with respect to Mission Corporation, a corporation of the State of Nevada. [246]

Sub-paragraph (b) of Paragraph XV of the complaint above referred to is not clear as to its exact meaning, but I assume that the objection may be made that the Agreement of Merger is deficient in that it fails to set forth the matters fully explained in the proxy statement relating to the purchase of the Getty stock in Pacific Western by Sunray and also the sale by Sunray of Tide Waters' stock to Tide Water. Under the Delaware Law neither of these transactions is necessary to be stated in an Agreement of Merger under Section 59. The circumstance that the acquisition by Sunray of the Pacific Western shares held by the Gettys may be a condition precedent to the accomplishment of the merger does not make it an essential part of an Agreement of Merger under Section 59 or one of the "terms and conditions of the consolidation or merger." These terms and conditions relate only to the essential provisions dealing with the transfer of the assets which are to fall within the Merger Agreement and may be illustrated by the circumstance that it is not unusual in a merger under Delaware Law for one of the corporations to transfer a portion of its assets before the merger becomes effective so that only the remaining assets of the corporation will fall within the terms of the Merger Agreement. The

sale of the shares of stock owned by the Gettys to Sunray immediately prior to the Agreement of Merger becoming effective cannot, in my opinion, be one of the terms and conditions of the Merger Agreement. It may well be a condition precedent to the accomplishment of the merger and this is stated explicitly in Article VI, Sub-paragraph 4 of the Agreement of Merger. [247]

A somewhat analogous situation existed in the sale of the assets of Postal Telegraph, Inc., to Western Union Telegraph Company, shown in the case of *Goldman v. Postal Telegraph, Inc.*, in the District Court of the United States, District of Delaware, 52 Fed. Supp. 763. In that case a specific Amendment to the Certificate of Incorporation of Postal Telegraph, Inc., was adopted, defining the rights of the Preferred Stock of Postal in the event of the sale of Postal assets to Western Union. It was objected that Postal could not agree to sell its assets conditioned upon this Amendment to its Certificate of Incorporation, but the Court held that this contention was without merit.

In Sub-paragraph (c) of Paragraph XV of the above complaint it is objected that under the Delaware Law the stock of the constituent corporations must be exchanged for shares or other securities of the surviving corporation and that the Delaware Law does not permit the payment of cash for stock of one of the constituent corporations. I assume that this averment is addressed to the purchase by Sunray of Pacific Western stock owned

by the Gettys. The objection, in my opinion, is without substance because, as above stated, the fact that the acquisition of this stock may be a condition precedent to the accomplishment of the merger does not bring the stock within the provision relating to the conversion of the constituent corporations' stock into the shares or other securities of the corporation surviving the merger. It is obvious from the facts stated in the proxy statement that the Getty shares in Pacific Western will be owned by Sunray immediately prior to the Agreement of Merger becoming effective [248] and it likewise appears from Article IV (b) that all rights with respect to these shares will cease and the certificates shall be cancelled and no shares of the surviving corporation be issued in respect thereof. In consequence the Getty shares in Pacific Western could not possibly under the Delaware Law and the terms of the Merger Agreement be converted into shares of Sunray, the surviving corporation. It is possible that the objection stated in Sub-Paragraph (c) may relate to the provisions of Article IV (e) of the Agreement of Merger, dealing with the mechanics of fractional interests in shares of the constituent corporation. This subparagraph, as is quite usual, provides that no fractional shares of 1947 Prior Preferred Stock of Sunray shall be issued and it provides further that Sunray may at its election pay to the holder of such fraction, in cash, the fraction's value of \$100, or the corporation may issue scrip certificates



convertible into full shares upon presentation of the necessary aggregate of the scrip certificates. This is not an unusual provision to be inserted in a Merger Agreement under Section 59 of the Delaware Law and does not, in my opinion, contravene the provision concerning the conversion of shares of the constituent corporations, but is merely one of the details or provisions which is deemed necessary or proper to be inserted in the Merger Agreement. As above stated, it is a matter of mechanics only for the convenience of the corporation and while the question has never been passed upon by the Courts of this State, I am of the same opinion as I have previously expressed in other cases that such provision is not in violation of [248] the provisions of Section 59. In any event the provisions are in the alternative and the stockholder owning a fraction of a share cannot demand payment therefor in cash; it is entirely at the election of the corporation whether to pay cash or to issue a scrip certificate. The provision for the issuance of a scrip certificate for a fraction of a share at the election of the corporation would obviate any possible objection such as may be intended to be asserted in Sub-Paragraph (c) of the complaint referred to.

In Sub-Paragraph (d) of Paragraph XV of the complaint it is averred that the defendant's stock in Tide Water is a part of the merger plan, is not stated in the Agreement of Merger and constitutes a partial liquidation of Mission Cor-

poration for the benefit of Pacific Western and its stockholders. Again, this objection shows a misconception of the meaning of the Delaware Law. Upon the effective date of the Agreement of Merger the shares of Tide Water owned by Pacific Western and Mission Corporation will become the property of Sunray. Mission will not then own the shares; they will be an asset of Sunray. Obviously these shares in Tide Water can be nothing more than an asset which Sunray will acquire as a result of the merger, similar to any other asset which may be owned by Mission or Pacific Western prior to the effective date of the Merger Agreement. They will be a part of the property which will vest in the surviving corporation under the provisions of Article VI of the Merger Agreement.

I assume that under the Nevada Law Mission Corporation, at least as a separate corporation, will cease [250] to exist when the Agreement of Merger becomes effective by proper filing and recording. It may well be that the sale of the Tide Water shares will follow the accomplishment of the merger and it likewise may very well be that the sale of these shares as a matter of financing may be necessary or advisable in connection with the acquisition of the Getty shares in Pacific Western, yet such sale does not thereby become one of the terms and conditions of the merger which is necessary to be set forth under the provisions of Section 59 of the Delaware Corporation Law. Sunray, as a resultant corporation under the provisions of

Sub-Paragraphs 10 and 18 of Paragraph Third of its Amended Certificate of Incorporation, being Article 11 of the Merger Agreement, will have power to dispose of the Tide Water stock in the same way that it will have power to dispose of any other asset of the corporation. In no sense can the sale of these shares be deemed a liquidation of Mission Corporation because Mission Corporation will not be the owner of the shares and would have no power to dispose of them. The provision for the sale of the shares of Tide Water is no different from provisions which are contained in other Agreements of Merger looking to the sale of certain assets to be acquired as a result of the merger which the corporation may not desire or may not be permitted to retain. I have been informed that one of the principal reasons for the sale of the Tide Water Stock is an objection raised by the Department of Justice to its retention by Sunray.

In Sub-Paragraph (e) of Paramount XV of the complaint it is objected that the stockholders of Pacific Western [251] and Pacific Western as a stockholder of Mission will be permitted to vote for the adoption of the Agreement and thereafter to receive the agreed value for their stock in cash, and that such transaction would circumvent the statutes of the State of Delaware providing for the payment of cash to dissenting stockholders. I am of the opinion that there is no substance to this objection so far as the Delaware Law may be concerned. I do not assume to speak upon the Nevada Law.

Under the law of Delaware whenever statutory authority is granted to the accomplishment of a particular corporate purpose stockholders may vote upon the subject as they see fit and their purpose or motive in so doing will not be inquired into by the Courts. This was so held in *Allied Chemical & Dye Corporation v. Steel and Tube Company*, 14 Del. Ch. 1, and in *Heil v. Standard Gas & Electric Company*, 17 Del. Ch. 214. In these cases the Court stated that the stockholder may exercise his voting right upon whim or caprice or even for personal profit so long as no advantage is obtained at the expense of fellow stockholders. This means that the stockholder may vote as he sees fit, but in the transaction, whatever it may be, whether a sale of assets, merger or otherwise, a stockholder or group of stockholders cannot take to themselves an advantage in respect of the assets of the corporation which is denied to other stockholders.

In *MacCrone v. American Capital Corporation*, 51 Fed. Supp. 462, the Federal District Court in Delaware stated:

“Moreover, the merger is an act of independent legal significance, and the mere fact that those who initiate it will [252] receive some benefit does not make it fraudulent.”

I find in the proxy statement, on page 5 thereof, a statement that Sunray intends to invite tenders of shares of Capital Stock of Pacific Western, other than the Getty shares, at a price of \$68.00 per share. This, as I understand it, means that all stockholders

of Pacific Western will be accorded the same right to sell their shares at the price fixed as will be accorded the Getty interests. No inequality of treatment therefore will result so far as stockholders of Pacific Western are concerned.

It is likewise objected that the Getty interests and presumably any other stockholder who would accept the offer of Sunray just above referred to would thereby circumvent the statutes of Delaware pertaining to the appraisal of the value of shares of dissenting stockholders under the provisions of Section 61 of the Delaware Corporation Law. Obviously no such result will follow because such shares could not possibly fall within the provisions of Section 61. As above shown, under the provisions of Article IV (b) these shares of Pacific Western which will be owned by Sunray prior to the Agreement of Merger becoming effective will be cancelled and no shares of Sunray will be issued in respect thereof. They obviously could not fall within the appraisal provisions of Section 61 because they will be shares owned by the resultant corporation itself. As I have previously stated, the purchase of Pacific Western shares is a condition precedent to the accomplishment of the merger and is in my opinion under the Delaware law unobjectionable. The acquisition of [253] these shares does not in any sense constitute a circumvention of the provisions of Section 61 of our law. The transaction relating to the purchase of Pacific Western stock may be collateral to but it is independent of the Agreement of Merger. The fact that the mer-



ger may be conditioned upon the acquisition of such shares furnishes no objection under the Delaware Corporation Law.

I do not assume to speak upon the fairness of the terms and conditions of the Merger Agreement. The authorities above referred to will disclose that under the Delaware Law, as I believe is true generally, the transactions of the Directors or stockholders acting under Charter of statutory authority are accorded a presumption of fairness and the Delaware Courts do not assume to substitute their own judgment for the judgment of the Directors or stockholders where the matter may be referred to an honest difference of opinion or judgment.

*Porges v. Vadsco Sales Corporation*, 32 Atl. (2d) 148.

The Court in the MacCrone case, above referred to, quoted with approval from the Porges case as follows:

“Where fraud of this nature is charged, the unfairness must be of such character and must be so clearly demonstrated as to impel the conclusion that it emanates from acts of bad faith or a reckless indifference to the rights of others interested, rather than from an honest error of judgment.”

Upon consideration of the objections to the proposed merger which I have dealt with I am of the opinion that none of the objections is valid and

if the said objections [254] should be presented to the Courts in Delaware none of them would be sustained.

CALEB S. LAYTON.

Sworn to and subscribed before me, the day and year first aforesaid.

[Seal]                      GERTRUDE T. PARKINSON,  
Notary Public.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,

One of Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 20, 1947.

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[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES H. SCHIMPF

State of California,

County of Los Angeles—ss.

Charles H. Schimpff, being first duly sworn, deposes and says:

That he is a Vice President of Capital Research Company, a corporation. That Capital Research Company was requested by David T. Staples, President of Mission Corporation, a Nevada Corporation, to analyze the proposed merger of Sunray Oil Corporation, a Delaware corporation, Pacific Western Oil Corporation, a Delaware corporation, and said Mission Corporation from the point of view of the fairness to Mission stockholders of said

proposed merger. That affiant has no interest in any of said Companies or in the said merger, with the exception that affiant, individually, is one of two trustees in a testamentary trust in which said trust there has been since 1933 and now is held fifty shares of stock of Pacific Western Oil Corporation.

That affiant is of the age of fifty years, and has been a resident of the State of California since 1928. That affiant [256] has been engaged in the security and finance business since 1929. Affiant has served as Vice President and Director of Pacific Company of California, which company is an underwriter and distributor of securities; as Vice President, Director and member of investment Committee of Los Angeles Industries, a company having diversified investment portfolio; and as Vice President of Transamerica Corporation. That affiant's duties with this latter company consisted in part of analyzing the worth and business operations of industrial companies for the purpose of preparing a report thereon looking toward the possible purchase by said Transamerica Corporation of said companies. That Capital Research Company, of which affiant is now a Vice President, provides the statistical analysis and investment recommendations for two investment trusts whose portfolios total in excess of \$20,000,000.00.

That affiant has been during his business career a Director of Central National Bank of Peoria, Illinois; Pacific Company of California; Merchants



Finance Corporation; Los Angeles Industries; The Axton-Fisher Tobacco Company; Adel Precision Products Corp.; Aero Corporation; Enterprise Engine and Foundry Company; Communications Equipment Corporation; Columbia River Packers Association.

In making his present analysis, affiant used the following source material: Notice of meeting and Proxy Statement of Mission Corporation for Special Meeting of Stockholders December 6, 1947; Annual Reports of the merging companies; The Wall Street Journal (New York and Pacific Coast Editions); Moody's Investors Service; Standard & Poor's Corporation Publications, and Commercial & Financial Chronicle.

That affiant's analysis of and conclusions with respect to said proposed merger, from the standpoint of its fairness to the stockholders of Mission Corporation, is as follows:

Affiant has been informed that Sunray Oil Corporation (hereinafter for convenience called Sunray), is offering the holders of the shares of capital stock of \$10 par value of Mission [257] Corporation (hereinafter called Mission) six shares of the Common stock of the par value of \$1 each of Sunray for each share of Mission, and that holders of Mission shares who do not accept this exchange offer and who avail themselves of the alternative provided by the General Corporation Law of the State of Nevada will receive the fair cash value of their shares determined in accordance with the provisions of said law.

Affiant is further informed that the contention has been put forward that the foregoing offer of exchange is unfair to the minority shareholders of Mission. In the opinion of affiant the offer can be unfair only under the following condition: (1) the realizable value of Mission shares to the minority stockholder is in excess of the market value of the Sunray shares offered in exchange, or (2) the true market value of Sunray shares is below their present market value, or (3) both the foregoing conditions exist. It thus appears that the entire question of unfairness can be narrowed down to a determination of the realizable value of Mission shares to the minority stockholder and the true market value of Sunray shares as compared to their present market value.

Before attempting this determination, affiant examined the ways in which the holder of common shares of a corporation can realize upon them. It is customary in analyzing securities to determine the net asset value per share, and this figure appears in practically all statistical services. It is usually arrived at by subtracting from the total tangible assets of a corporation all of its current liabilities, other liabilities, reserves, debts, and the par value of all classes of stock entitled to preference over the common shares in liquidation. The remaining figure is then divided by the number of common shares outstanding. Except where the articles of incorporation of a company specifically provide for the re-purchase by the corporation of its common shares at a figure

bearing a direct relationship to the net asset value per share, as in the case of [258] many open-end investment trusts, or in the event of liquidation, no method is normally open to the holder of common shares of a corporation whereby he can exchange his shares either for his proportionate share of the net assets of the corporation or for the cash equivalent thereof. This fact is paramount in any determination of the value of common shares to their holder.

Since, as affiant is advised, the stockholders of Mission have no right to require Mission to re-purchase their shares, and since liquidation and the ensuing distribution of the net assets to the stockholders is not contemplated, it is necessary to examine the other courses which are normally open to the stockholder for realizing upon his common shares. In the opinion of affiant, the only other course is the sale by the stockholder of his shares, (1) for cash, or (2) for other property.

If a security is listed and actively traded upon a recognized stock exchange, the sales of that security upon the exchange are generally accepted as being the value of the security to a minority stockholder at the time of each sale. That there is no direct relationship between the market value of a security and its net asset value per share can readily be determined from the tabulation (which is attached hereto, marked Exhibit A, and which is hereby referred to and made a part hereof), which shows for various dates the net asset value per share and the sale price

of the common shares of various companies, both in the oil industry and in other types of business. From said Exhibit A it may be noted that the ratio between market value and net asset value per share is not a constant for each security but varies from time to time and from industry to industry. Attention is particularly directed to the figures for Petroleum Corporation of America since this company is most nearly comparable to Mission in that it owns shares of other companies in the oil industry and has little else in the way of assets other than cash. [259]

As stated earlier herein, regardless of the amount of net assets per share which a corporation has either on its balance sheet or as so-called hidden assets, the stockholder normally has no way of realizing upon them. An examination of Exhibit A will demonstrate also, that the existence of net assets per share either stated on the balance sheet or as so-called hidden assets does not assure the minority stockholder a market value for his shares which bears any fixed relationship to the per share value of these assets. On the contrary, the market place makes its own determination of the value of both the disclosed and so-called hidden assets of each corporation, and this evaluation changes from time to time, from company to company, and from industry to industry.

The shares of both Mission and Sunray are traded upon the New York Stock Exchange. It is reasonable to assume, therefore, that the sales of these stocks upon the New York Stock Exchange accur-

ately record the amount which any minority shareholder of either corporation could hope to receive from the sale of his shares.

In the opinion of affiant, any contention that so-called hidden assets entitle the minority shareholder to a price higher than that fixed in the market place is clearly illogical since as noted there is no way for the minority stockholder to realize upon his shares except through the market place, and the market place makes its own determination of the value of a corporation's assets both recorded and hidden.

Although it may be argued that the shares of Mission will have a future market value in excess of their present market value due to influences which will affect the price of this stock more favorably than the price of Sunray stock, in the opinion of affiant, such a contention is unworthy of consideration since it is dependent upon assumptions for which no factual support can be mustered. The market place is quite capable of considering all factors which might contribute to the future enhancement of the value of a stock, [260] and this possible future value discounted to the present time is one of the factors considered by the market place in arriving at its present day value for any security.

Since the market place is the only effective determinant of value, affiant has examined the value which said market has set for the shares of Mission and Sunray. Such investigation included a date



prior to the circulation of the first rumors of the proposed Sunray et al. merger, and December 31, 1946, provided a convenient such date for the reasons: (1) it was not until several months later that the first rumors regarding the Sunray et al. merger began; and (2) the companies in question all prepared both balance sheets and profit and loss statements, actual and/or pro forma as of that date.

For Mission, based upon its balance sheet and profit and loss statement as of December 31, 1946, the figures are as follows:

Net asset value for Common stock.....	\$19,266,989.00
Net asset value per share (1,374,145 shs)..	\$ 14.05
Earnings after taxes 12 months to	
12/31/46 .....	\$ 2,381,717
Earnings after taxes 12 months to	
12/31/46 per share .....	\$ 1.735

The last sale of Mission stock on December 31, 1946, was \$42.00 per share. This is 24.2 times the earnings per share and 299% of the net asset value per share both as shown above. Both ratios appear unduly high when compared to other oil companies as shown in the tabulation which is attached hereto, marked Exhibit B, and which is hereby referred to and made a part hereof.

The balance sheet of Mission, however, does not reflect the market value as of December 31, 1946, of the shares of Tidewater Associated Oil Company and Skelly Oil Company owned by Mission, since said holdings are carried at cost. As of the close of business December 31, 1946, the last sale of Tide-

water Associated stock was \$19.87½ a share and of Skelly \$71.00 per share. If these [261] values for Mission's holdings of the stocks of these two companies are substituted for the balance sheet figures, the following figures are applicable:

Net asset value for Common stock.....	\$68,188,699
Net asset value for Common stock per share .....	\$ 49.49

Mission's share of the net earnings of Skelly Oil Company amounted to \$6,002,000, of which Mission received \$1,165,314 in dividends. If 94% of the remainder is added to Mission's net after taxes, the following figures are applicable:

Earnings after taxes 12 months to 12/31/46 .....	\$ 6,928,201
Earnings after taxes 12 months to 12/31/46 per share .....	\$ 5.02

The market price of \$42.00 per share is 8.37 times the adjusted earnings as shown above and 85% of the adjusted net asset value per share shown above. It thus appears that the market place has taken into account the so-called hidden assets in Mission and placed a value upon them which brings the ratios of market value to earnings per share and net asset value into line with these ratios for other companies as shown by Exhibit B. The discount from net asset value per share of 15% compares with a discount of 23.9% for Petroleum Corporation of America as of the same date.

For Sunray, based upon its balance sheet and

profit and loss statement as of December 31, 1946, the figures are as follows:

Net asset value for Common stock.....	\$30,258,494.00
Net asset value for Common per share (4,689,186 shs) .....	6.47
Earnings after taxes 12 months to 12/31/46 after Pfd. div. for 1 year on stock outstanding at end of year.....	3,128,217.00
Earnings after taxes 12 months to 12/31/46 after Pfd. div. for 1 year on stock outstanding at end of year, per share .....	0.668

The last sale for Sunray stock on December 31, 1946, was at \$8.00 per share. This is 11.9 times the earnings per share shown above and 123.5% of the net asset value per share shown above.

It thus appears that the market appraised the stock of Sunray on a higher basis than the stock of Mission, both from the standpoint of earnings and of net asset value per share. That it is not unusual for an operating company to sell at a higher ratio of market price to net asset value can be determined by reference to Exhibit B which shows this ratio for the same date for various operating oil companies as compared to an oil stock holding company, namely Petroleum Corporation of America.

Affiant has been furnished a copy of the notice of meeting of December 6, 1947, and proxy statement sent to the holders of stock, and said proxy statement contains, as Exhibit G pro forma financial statements of Sunray as of December 31, 1946.



Based upon said Exhibit G the figures for Sunray are as follows:

Net asset value for Common stock.....	\$79,945,586.00
Net asset value for Common stock per share (9,083,208 shs) .....	8.79
Earnings per share (pro forma income statement) .....	0.35

However, to put the Sunray pro forma balance sheet and income statement as of December 31, 1946, on the same basis as that of the statement of Mission as of the same date adjusted to reflect the market price of Tidewater Associated and Skelly stocks, two adjustments should be made: (1) Sunray's holdings of Skelly should be stated at \$71.00 per share (the same price as used in the Mission adjustment); and (2) 94% of Sunray's share of the net income of Skelly after deducting dividends paid should be added to earnings after taxes. When these two adjustments have been made and allowance has been made for preferred dividends on Sunray Preferred, the figures are as follows: [263]

Net asset value for Common stock.....	\$57,167,334.00
Net asset value for Common stock per share .....	6.30
Earnings per share .....	0.86

Using these adjusted figures, the market value for Sunray of \$8.00 per share as of December 31, 1946, is 9.3 times earnings and 126.9% of net asset value.

Since on December 31, 1946, the market place had no knowledge of the presently contemplated Sunray, et al., merger (plans for which were not then in existence, so far as affiant is advised) in

order to arrive at a price which the market would, in affiant's opinion, have placed upon the shares of Sunray had the merger been in effect on December 31, 1946, the hereinabove computed ratio (123.5%) between the market price for Sunray Common and the actual net asset value per share and the hereinabove computed ratio (11.9 times) between the said market price and the actual net earnings per share as of that date, should properly be applied to the pro forma net asset value and net earnings per share both before and after the hereinabove described adjustment of the balance sheet and income statement. The application of said ratios as of December 31, 1946, results in the following computations:

	Before Adjustment		Per Share
\$8.79	Net asset value per share x 123.5%	=	\$10.82
\$0.35	Net earnings per share x 11.9	=	4.16
	After Adjustment		
\$6.30	Net asset value per share x 123.5%	=	7.77
\$0.86	Net earnings per share x 11.9	=	10.48

Based upon the adjusted figures, in affiant's opinion, a price midway between \$7.77 and \$10.48, or \$9.125 a share would approximate the value which the market would have placed on the shares of Sunray Common had the merger been in effect on December 31, 1946. It thus appears that an offer of six of such shares having [264] an aggregate market value of \$54.75 in exchange for one share of Mission having a market value of \$42.00 would have been eminently fair to the Mission minority holder. It would, in fact, have provided the minority holder

of Mission stock a price in excess of the \$49.49 per share net asset value for the Common stock of Mission as hereinbefore set forth on page 7, line 5 hereof. Moreover, such offer would have afforded the first opportunity since 1938 for a Mission minority stockholder to dispose of his stock at a premium over its net asset value, inasmuch as the market price of Mission has been uniformly below the net asset per share since that time. Also as a simple arithmetical computation will show, a market price for Sunray as low as \$9.50 per share would make the Sunray offer to a Mission stockholder of greater value than any amount which the Mission stockholder has heretofore been able to realize even after the sharp run up in Mission stock which occurred after the announcement of the Sunray offer.

Affiant has been advised that the point has been raised that Mission now has no funded debt or Preferred stock whereas Sunray after the merger will have about \$50,000,000 of debt and about \$50,000,000 of Preferred stock ahead of the Common. In the opinion of affiant, whether this strengthens or weakens the Common stock of Sunray Oil Corporation depends almost entirely on the investor's opinion of the outlook for the oil industry. Thus, if this outlook is held to be favorable, the existence of debt and preferred stock carrying low interest and dividend rates would be favorable to the common stockholder since such capital structure would permit a larger share of the prospective increase in earnings to be made available for the common stock

than if the entire capitalization of the company consisted of common stock. In the opinion of affiant the outlook for the oil industry is definitely [265] favorable.

To the affiant it would thus appear that regardless of any argument that the offer of six shares of Sunray for one share of Mission is unfair to the minority stockholders of Mission, the evidence of the market place demonstrates conclusively to the affiant that the offer is a fair one. The alleged existence of so-called hidden assets or of future benefits does not, in the opinion of affiant, justify any assumption that the minority stockholder can benefit at the present time in any way therefrom, since the minority stockholder has no alternative (unless his statutory remedy under the Nevada Corporation Law be considered an alternative) but to accept the verdict of the market place; and in the instant case that verdict is, in the opinion of affiant, conclusive proof of the fairness of the offer.

/s/ CHARLES H. SCHIMPF.

Sworn to and subscribed before me this 19th day of November, 1947.

[Seal] ELLEN WERTZ,

Notary Public in and for the County of Los Angeles,  
State of California.

My Commission Expires September 29, 1950.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,

One of Attorneys for  
Plaintiff. [266]

## EXHIBIT A

	December 31, 1932			December 31, 1936			December 31, 1940			December 31, 1943			December 31, 1946		
	Net Asset Value Per Share	Market Price Per Share	Market Price As Percent of Net Asset Value	Net Asset Value Per Share	Market Price Per Share	Market Price As Percent of Net Asset Value	Net Asset Value Per Share	Market Price Per Share	Market Price As Percent of Net Asset Value	Net Asset Value Per Share	Market Price Per Share	Market Price As Percent of Net Asset Value	Net Asset Value Per Share	Market Price Per Share	Market Price As Percent of Net Asset Value
Petroleum Corp. of America (a).....	\$ 7.23	\$ 4-3/4	65.8	\$ 23.95	\$17-7/8	74.7	\$ 8.05	\$ 6-1/4	77.6	\$ 9.40	\$ 8-7/8	94.5	\$ 12.20	\$ 9-1/2	77.8
Ohio Oil Company .....	17.33	6-7/8	39.7	11.85	17 3/4	151.0	12.03	7-3/8	61.2	14.49	18-1/4	126.2	18.57	24-3/8	123.0
Standard Oil of California.....	42.50	24-1/2	57.1	41.56	44-1/4	106.0	44.41	18-1/2	40.8	45.98	37-1/4	81.2	52.74	57-3/8	109.0
Union Oil Company .....	36.60	9-1/2 <sup>b</sup>	26.0	28.62	25-3/4	89.7	29.78	12-1/2	42.0	31.37	19-1/8	61.2	33.21	22	66.3
Skelly Oil Company .....	20.90	3-1/2	16.7	26.57	47-1/4	177.5	43.67	21	48.0	56.78	38-1/8	177.5	77.39	71-1/4	91.8
New York Central R. R.....	147.80	18	12.2	138.70	41-1/4	29.8	115.50	13-7/8	12.0	128.79	15-3/8	12.1	130.23	18-1/8	13.6
U. S. Steel Corporation.....	187.06	27-1/2	14.7	143.34	78	58.4	124.31	69-3/4	56.1	143.61	51	35.6	142.08	72	51.0
Phelps Dodge Corporation .....	35.19	5-1/8	14.5	32.15	54-1/2	170.0	32.37	35-3/8	109.0	33.32	20-7/8	62.7	34.17	42-1/2	123.8
American Woolen Company .....	11.69	4-1/2	38.4	10.47	9-3/4	93.1	.....	8-3/8	.....	28.19	6-1/8	21.7	65.77	33-7/8	50.8

(a) The net asset value shown for this company reflects the market price as of the date indicated of the various securities owned by this company.

## EXHIBIT B

As of December 31, 1946

	Market Price Per Share	Net Asset Value Per Share	Market Price As Percent of Net Asset Value	1946 Earnings Per Share	Mkt. Price Times Earnings Per Share
Ohio Oil Company .....	\$23-7/8	\$18.49	129.2	\$ 2.78	8.6
Skelly Oil Company .....	71	75.38	94.2	10.30	6.9
Standard Oil Company of					
California .....	57-3/4	49.66	116.1	5.15	11.2
Pure Oil Company .....	24-1/8	30.59	79.1	3.74	6.5
Phillips Petroleum Company	58	50.44	115.1	4.60	12.6
Petroleum Corporation of					
America .....	9-1/2	12.20	76.1	.45	21.1

[Endorsed]: Filed Nov. 20, 1947.







[Title of District Court and Cause.]

### AFFIDAVIT OF DAVID T. STAPLES

State of Nevada,  
County of Washoe—ss.

David T. Staples, being first duly sworn, deposes and says:

I am a citizen and resident of the County of Los Angeles, State of California, and am fifty (50) years of age. I am President of Pacific Western Oil Corporation, hereafter referred to as "Pacific," and have been since February 26, 1947. Prior thereto I was Executive Vice-President from the fall of 1941. I have been associated with the company as its attorney and in other capacities since the year 1929.

I was first elected to the Board of Directors of Mission Corporation, hereafter referred to as "Mission," and as President of Mission on October 18, 1947. My connection with and knowledge of Mission dates from 1935, when Pacific first started buying Mission stock. Since then the holdings of Mission in Tide Water Associated Oil Company, hereafter referred to as "Tide Water," have been increased about 467,000 shares after the exercise of the Nevada [269] Incorporation option for 250,000 shares and its holdings in Skelly Oil Company, hereafter referred to as "Skelly" have been increased about 25,000 shares. Aside from the ownership by Mission of the stock of Skelly and Tide Water, Mission has one fully developed oil lease



which is being operated by Skelly for Mission. The value of Mission stock depends largely upon the market value of its principal assets, which are its stock holdings of Tide Water and Skelly. For the last several years I have heard many suggestions as to a merger of Pacific and Skelly, Pacific and Mission, Mission and Skelly, and/or Pacific and Tide Water.

Mr. Fero Williams has been a director of Mission since 1942, a director of Skelly since 1937, and Assistant Treasurer and Controller and financial adviser of Pacific for many years. Since 1937 he has made various evaluations of the assets of these companies and has many times discussed them with me. In February or March of this year I was told that there had been discussions between Tide Water and Mr. J. Paul Getty and Mr. Thomas A. J. Dockweiler looking to the purchase of the Pacific stock then held by Mr. Dockweiler as trustee of the Sarah C. Getty Trust and by Mr. J. Paul Getty for a price of \$68.00 per share. I believed that if such a deal was put through it would probably result in a merger of Pacific, Mission, Skelly and Tide Water. At my suggestion Mr. Williams renewed studying and making analyses and evaluations of the assets of the various companies.

I afterward learned that the purchase of the stock of the so-called Getty interests by Tide Water had been abandoned, but about that time I was advised that Sunray Oil Corporation, hereafter referred to as "Sunray," was interested in acquiring stock of the Getty interests. I first heard that they had

offered \$58.00 a share, and then was told by Mr. Dockweiler that the trustees had declined the offer. During September I knew that there were active negotiations for the purchase of such stock at \$68.00 per share. [270] I also knew that the agreement of sale, which is attached as Exhibit A to plaintiff's complaint, was executed on October 4, 1947. My recollection is that the agreement was shown to me at that time by Mr. Joseph Peeler, tax attorney. Since August, and prior thereto, Mr. Williams had been working on an analysis and evaluation of the assets of Mission, Skelly, Pacific and Sunray, as we knew that the purchase of the stock would involve a merger of some of those companies. I also assumed until shortly before the meeting of the Mission directors in Tulsa, Oklahoma, on October 18, 1947, that it would be a merger of all four companies.

On many different occasions during September and the first part of October Mr. Williams and I discussed the analysis which he was making. I would not be able to give the exact dates of any of these conferences because they were almost continuous. Mr. Emil Kluth, who is in charge of the Geological Department of Pacific, and who has been for some time a director and Vice-President of Mission, and a director of Skelly, was present at many of those discussions. I cannot state exactly when I first heard the proposed ratio of exchange, but I believe it was in the month of July. On Monday, October 6th, Mr. Dockweiler, Mr. David Hecht, who

is one of the attorneys for Pacific and also a personal attorney of Mr. J. Paul Getty, and Mr. Petigrue of Breed, Abbott and Morgan, attorneys for Sunray, were in my office. It was stated to me that Sunray was going to make an offer of five or six shares of the surviving corporation for every one share of Mission and nine to ten shares of the surviving corporation for each share of Skelly.

Monday afternoon, October 13th, I had a call from Mr. Dockweiler from Tulsa, Oklahoma. He told me in substance it had become apparent that Mr. Skelly was not going to cooperate in passing upon the proposed merger. The following Wednesday, [271] October 15th, I was asked to take a plane for Tulsa. I did so, reaching there at about 1:00 a.m. Friday morning, the 17th. I was in conference at various times during that day and evening with Mr. Boal, Mr. Williams, Mr. Dockweiler and Mr. Kluth. During a part of that day Mr. Dockweiler, Mr. Kluth and Mr. Williams were in attendance at a directors' meeting of Skelly. Mr. Williams went over with us very carefully his analysis and evaluations of the assets of the respective companies, Mission, Pacific and Sunray, which were involved in the proposed merger. I have read the affidavit and report of Mr. Williams, served and filed herewith. It contains substantially the views which he expressed to us as to values of said companies and the basis of his analysis of their values, and additional factors. I personally was entirely satisfied then, and am now, that the exchange basis of six shares of the surviving corporation for one of Mis-

sion was and is a fair and equitable offer to Mission stockholders.

The directors' meeting of Mission I understand convened at 9:30 o'clock a.m., October 18, 1947, and continued to 10:55 a.m. I did not attend at the opening of the meeting but was called in as soon as I was elected a director. I had been advised that it was intended to elect me in place of Mr. Graves, who had tendered his resignation as a director of Mission. The merger plan was not discussed at the morning meeting, which recessed at 10:55 a.m., resumed at 3:00 p.m., and lasted until 7:45 p.m. Nearly all of the afternoon session was devoted to discussion of the merger plan. I do not recollect that Mr. Skelly at any time ever stated that the ratio of exchange was unfavorable, but stated the matter was being rushed and he wanted more time to consider it. Mr. Hyden stated emphatically that he was not saying the ratio was not fair, but that they had not had sufficient time to consider it and that there had not been enough outside independent appraisals to enable the directors to reach an independent [272] judgment. I do not say that those were the precise words, but that was the substance of Hyden's statement.

If the transaction was to be consummated this year it was impossible to accede to any request for delay. As far as I was personally concerned, I had reached the conclusion that the transaction was an entirely fair one. I realized, of course, that I was a director of Pacific. At the same time I was conscious of the fact that, in becoming a director of

Mission, it would be improper for me to agree to any merger which I did not think was fair. In voting for the merger I do not and did not feel that there was any conflict between my duties as a director of Pacific and those as a director of Mission. The amount to be received by the stockholders of Pacific in the merger was fixed by arms length negotiations between Sunray and the majority stockholders of Pacific. The price arrived at was supported not only by the value of Pacific's assets but was the same price which such stockholders had been offered by Tidewater several months previously. Subsequent to the Tidewater offer there have been raises in the price of oil which made oil properties and oil securities more valuable. The Pacific stockholders were to have no continuing equity interest in the merged company. I state emphatically that I could not have gone upon the Mission board and voted as I did if I had not in my own judgment reached the conclusion that the deal was fair to all Mission stockholders. I had and have no personal interest whatsoever in voting in favor of the merger. In fact my own personal interests are probably directly contrary to the approval of the merger. I am President and a Director of both Pacific and Mission. I expect to continue as an employee of the merged company. I have not been [273] promised to be made a director or an officer of the merged company. Sunray has advised that the Board of Directors of Sunray are to continue to be the Board of Directors of the merged company and I am not one of such directors. This



situation is equally true of the directors Williams and Kluth. Furthermore the approval of the proposed merger by the Board of Directors merely constitutes an initial step preparatory to the submitting of the merger to the stockholders for their approval. It is my understanding that the stockholders and not the directors must ultimately determine whether or not the merger is to become effective.

I felt that I and the other directors voting for the merger had ample and sufficient information for our decision. As regards the statement that directors Skelly and Hyden needed any independent advice, I did not concede that for a moment. I know that Mr. Skelly as the founder and President of Skelly has been actively engaged in its management since it was founded. He had been President of Pacific from 1937 until his resignation on February 26, 1947. I believe that both Mr. Skelly and Mr. Hyden were thoroughly familiar with the operations and values of Mission, Skelly and Pacific, and that they were also, from a business and operating point of view, sufficiently familiar with the values of Sunray to enable them to form an opinion as to the fairness of the ratio. The fact that neither Mr. Skelly nor Mr. Hyden at that time asserted or pointed out any reason why the proposed ratio of exchange was unfair confirmed this view. I thought, and still think, that the plea for further time was simply a method to kill the deal, as under the agreement of October 4, 1947, between Sunray and Mr. Thomas A. J. Dockweiler, Mr. George Franklin



Getty II and Mr. J. Paul Getty, the merger had to be consummated during 1947 [274] or it was to be cancelled.

The amended complaint alleges that Pacific owns 47% of the stock and is in possession of sufficient additional proxies to approve the merger. Pacific owns slightly less than 47% of the stock and has no proxies from any other stockholders of Mission. Pacific has not solicited proxies and does not intend to do so. Without the affirmative action of additional Mission stockholders voting in favor of the merger it is my understanding that it cannot become effective.

In order to solicit proxies the Mission management was required under the Securities and Exchange Act and the rules and regulations of the Security and Exchange Commission to prepare a voluminous proxy statement setting forth in detail full and complete information concerning all the constituent corporations to the merger, their businesses and properties, the terms of the merger, the terms of the purchase agreement between the Getty interests and Sunray, the detail of the Tidewater sale, detailed financial statements of the several corporations and other pertinent data. A draft of the proxy statement was filed with the Securities and Exchange Commission and reviewed by that agency prior to being sent to the stockholders. That agency not only reviewed the draft of the proxy statement and required additional information to be included in it but as I am informed reviewed the reports of the petroleum engineers to substantiate

their conclusions as to the oil and gas reserves of Sunray and the other corporations. A copy of such proxy statement is annexed hereto and made a part thereof. The contents are true to the best of my knowledge, information and belief.

The proposed merger, in my opinion, is meritorious for business reasons. Sunray is a producer of crude oil, gasoline and refined products and Skelly in addition is a retail [275] marketer of gasoline and refined products. The combined production of crude oil should insure to both Skelly and Sunray a sufficient quantity of such crude oil for the continuous operations of their respective refineries and the expansion of their business. Pacific's production of crude oil in California should enable the merged company to expand the refining activities heretofore carried on by Sunray in California. Skelly is critically in need of additional sources of gasoline and refined products to meet its marketing requirements. Sunray as a producer of gasoline and refined products, with no retail marketing facilities, will be able to furnish Skelly with this needed gasoline. Skelly's production of crude oil in its Velma field can be used to good advantage by Sunray at its new refinery at Duncan, Oklahoma. The use of this oil at such refinery will also insure to Skelly an outlet for its Velma production. The Sunray refinery at Duncan will be a producer of high octane gasoline. The Skelly refinery at Eldorado is not capable of producing high octane gasoline. If the trend to increase the octane rating of gasoline continues, Skelly's competitive position as a distributor of gasoline will be improved by hav-

ing available the high octane gasoline from Sunray's Duncan refinery. The joint transportation facilities, bulk stations, etc., owned by both Sunray and Skelly in the Mid-Continent, will be available to both companies for their mutual benefit. The combination of the resources of Sunray and Pacific will facilitate greater exploration work in the search for crude oil and permit an expansion of development of their combined crude oil resources. As a result of this joint operation of Sunray and Pacific the Mission stockholders will benefit.

In Witness Whereof, I have hereunto set my signature [276] this . . . . day of November, 1947.

/s/ DAVID T. STAPLES.

Subscribed and sworn to before me this 20th day of November, 1947.

[Seal] RUTH T. QUIVEY,

Notary Public in and for the County and State  
Aforesaid.

My Commission Expires March 15, 1948.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,

One of Attorneys for  
Plaintiff. [277]

[A printed copy of Mission Corporation Notice of Meeting and Proxy Statement was annexed to and made a part of the Staples affidavit. It is omitted from the record at this point as it is again included as Plaintiff's Exhibit No. 1 in evidence.]

[Endorsed]: Filed Nov. 20, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF HAROLD J. WASSON

State of Nevada,  
County of Washoe—ss.

Harold J. Wasson, being first duly sworn, deposes and says:

I am a consulting Engineer with offices located at 25 Broadway, New York City. For the past 25 years I have been engaged as a specialist in the field of petroleum property valuation and during that period I have examined and evaluated the assets and oil properties and oil reserves of a great many oil companies throughout the United States for the purpose of furnishing opinions to oil companies, finance institutions and governmental agencies with respect to the fair and reasonable value of such properties. For 5 of this 25-year period I was associated in New York with E. B. Hopkins, a Consulting Petroleum Geologist and for the last 20 years I have carried on my own business. I obtained my preliminary education at the University of Minnesota and received a degree in mining engineering in 1914. For about 6 years thereafter I was employed by oil companies in this country and in South America in field work as an oil geologist and aside from a period of two years in the United States Army during World War I, I have devoted substantially all my professional activities to matters concerning the value of petroleum properties.

Since starting my own firm 20 years ago I have personally visited or examined most of the oil fields

of the United States. Some of these have been complete investigations based upon company records and visits to the various fields and headquarters and some have been based upon public documents and reported facts relating to production and costs of operation.

During my years of this work I have made investigations of both Sunray Oil Corporation properties and properties of Pacific Western Oil Corporation. Some of these investigations were for Sunray and some for other parties interested in Pacific Western Oil Company. Accordingly before undertaking the present investigation I was familiar with the extent and nature of the properties of each.

On or about the latter part of September, 1947, I was engaged by the Sunray Corporation to make a full investigation and to appraise the oil properties of Pacific Western and Sunray for the purpose of estimating the monetary value of these oil properties. These appraisals were ordered made in connection with a proposed merger of Pacific Western Oil Corporation and Mission Corporation into Sunray Corporation.

In order to give an opinion in these respects, all pertinent company records of Sunray and Pacific Western were examined by me and [361] my associates. This study enabled me to form a judgment on the future producible reserves of oil and gas attributable to each producing property.

Based on this data I calculated the future sales value of this oil and gas referred to the price of



oil and gas prevailing at August 31, 1947, and estimated cost of producing the same. From these figures I established the "net realization" derivable from each producing property. Realization is the difference between the sale value of the oil and gas to be produced and the cost of producing the same projected over the life expectancy of each field before income taxes.

As the first step in estimating the fair and reasonable value of each producing unit as of the present time, the "net realization" amounts were reduced to present worth by discounting them at 6% compound discount for the period of their deferment from the appraisal date.

With these discounted amounts as a basis, I then estimated the fair and reasonable present monetary value of the properties of each company. From my experience in evaluating and determining fair and reasonable value of oil properties, it is my judgment that under present economic conditions the fair and reasonable value of the oil and gas properties will approximate 70% to 80% of the discounted mathematical amounts referred to above.

The valuation of petroleum properties by attempting to place an arbitrary value per barrel of daily oil production is not a proper method of determining their value, and is not now in use by qualified petroleum appraisers and consultants.

The procedure described above and followed in my report is the evaluation process most generally used by leading professional appraisers of petroleum properties. [362]



I set out below a summary of my investigation and conclusions:

Pacific Western Oil Corporation  
(Quantities of Oil and Gas)

Recoverable oil .....	42,060,600 bbls.
Recoverable gas .....	6,000,000 MCF

Monetary Valuation  
Estimated Dollar Realization

	From Oil	From Natural Gas
1st 10-year period.....	\$41,800,000	\$420,000
2nd 10-year period.....	12,088,000	300,000
	\$53,888,000	\$720,000
Grand Total oil and gas realization	\$54,608,000	

The present worth of estimated realization from oil and gas at 6% compound discount for the estimated period of its deferment is \$36,863,170.

My opinion as to the "fair and reasonable present value" of the above discounted figure of estimated realization is approximately \$28,300,000, that is to say, approximately 77% of the \$36,863,170.

In addition to the foregoing valuation of the oil and gas properties I have evaluated the other assets of the company closely related to its oil and gas interest at the following figures:

(note a) Undeveloped Leaseholds and Royalties.....	\$1,964,000
(note b) Fee lands .....	\$1,036,000
Total .....	\$3,000,000

Note a. The undeveloped leaseholds and royalties were evaluated at their approximate book cost.

Note b. The fee lands, owing to the fact that for the most part they have negligible value from the oil and gas viewpoint, were evaluated at substantially less than their book value and in line with their value merely as agricultural and miscellaneous real estate property based on recent appraisals made by specialists in these values.

Other values reflected in the balance sheet that were noted in our evaluation report were the Getty Realty Company, owner of the Pierre Hotel in New York City, the net quick assets of the Pacific Western Oil Corporation which amounted to approximately \$3,600,000, and its extensive share holdings in Tidewater Oil Corporation and Skelly Oil Corporation. These other values, however, were not within the purview of our evaluation which was limited solely to the assets related to the oil and gas interests of the Pacific Western Oil Corporation.

Sunray Oil Corporation  
(Quantities of Oil and Gas)

Recoverable Oil .....	177,238,182 barrels
Recoverable Gas .....	592,650,000 Thousands of cubic ft. (M.C.F.)

Estimated Dollar Realization

	From Oil	From Natural Gas
1st 10-year period .....	\$148,296,000	\$8,843,000
2nd 10-year period .....	70,482,000	6,791,000
3rd 10-year period .....	27,758,000	5,613,000
4th 10-year period .....	5,769,000	5,400,000
	\$252,305,000	\$26,647,000
Grand Total Oil and Gas realization	\$278,952,000.	

The present worth of the estimated realization from oil and gas at 6% compound discount for the period of its deferment from the appraisal date, August 31, 1947, is \$159,436,000.

My opinion as to the "fair and reasonable value" of the above discounted value of the estimated realization is approximately [364] \$115,895,000, that is to say, approximately 73% of the \$159,436,000

(the present worth of estimated realization from the oil and gas at 6% compound discount) estimated realization from oil and gas.

Attention is called to the fact that since the foregoing evaluations were determined a country-wide increase in the prices being paid for oil has taken place. In my opinion the effect of this price increase adds several millions of dollars to the values above cited.

In addition to the foregoing evaluation of the oil and gas properties, I have evaluated the other assets of the Company as follows:

Undeveloped leases and royalties .....	(a)	\$ 5,104,000
Miscellaneous assets .....	(b)	827,000
Net quick assets .....	(c)	10,215,938
Allen Oklahoma refinery .....	(d)	2,500,000
		\$18,646,938

Note (a). Undeveloped leases and royalties were evaluated at their book values August 31, 1947.

Note (b). Miscellaneous assets were evaluated at their book values at August 31, 1947.

Note (c). Net quick assets were taken from the balance sheet of August 31, 1947.

Note (d). The Allen refinery was valued at approximately two times its book value at August 31, 1947. Based on its earnings record over many years, it is fairly worth \$2,500,000.

I am informed that since August 31, 1947, Sunray has acquired from the War Assets Administration a large refinery at Duncan, Oklahoma, and a substantial value attributable to this acquisition must be added to the above to convey an overall picture.

Accompanying this affidavit I submit photostatic copies of [365] my work papers which present the basic data upon which my appraisals of Pacific Western Oil Corporation and Sunray Oil Corporation were based. I also submit my reports covering (1), an evaluation report on Pacific Western Oil Corporation, alone, and (2), a report on the evaluation of Sunray Oil Corporation with Pacific Western Oil Corporation which shows the result of the proposed merger of these two companies.

/s/ HAROLD J. WASSON.

Subscribed and sworn to before me this 20th day of November, 1947.

[Seal] /s/ BRUCE B. THOMPSON,  
Notary Public.

Service by copy hereby is admitted this 21st day of November, 1947.

/s/ JOHN P. THATCHER,  
Attorney for Plaintiff.

[Endorsed]: Filed Nov. 21, 1947. [366]

[Title of District Court and Cause.]

AFFIDAVIT OF CLARENCE H. WRIGHT

State of Nevada,  
County of Washoe—ss.

Clarence H. Wright, being duly sworn, deposes and says:

I am President of Sunray Oil Corporation (hereinafter referred to as "Sunray") the principal executive office of which is located at Tulsa, Oklahoma. Sunray is engaged principally in the business of exploring, acquiring interests in and developing prospective and proven oil and gas lands in the production, purchase, gathering, refining and sale of crude oil and the products thereof and of related petroleum products. It produces crude oil and natural gas in the states of Arkansas, California, Illinois, Kansas, Louisiana, New Mexico, Oklahoma and Texas. It also operates refineries at Allen, Oklahoma and Santa Maria, California. It has recently acquired from the War Assets Administration a refinery known as the Beckett Refinery near Duncan, Oklahoma, which is presently being modernized and rearranged for commencing operations on December 15, 1947.

Under conditions which have existed in the oil business since [367] the commencement of the war, it has been apparent that because of the extreme shortages of crude oil, the difficulty in discovering new oil deposits, the shortages of materials, equipment and facilities, the length of time, the monetary



expenditures and difficulty of obtaining necessary materials to acquire or construct new facilities, the compared with the huge advantages possessed by the larger oil companies, for smaller oil enterprises to continue to exist and flourish it is essential for them to combine their resources, reserves, facilities, and businesses and activities.

Accordingly, during the past four years Sunray has undertaken an expansion program which included merging and combining with various other oil enterprises and acquiring and developing facilities and properties. On October 15, 1943, Superior Oil Corporation was merged into Sunray. On June 12, 1944, Darby Petroleum Corporation was merged into Sunray, as of February 1, 1946, Sunray purchased a refinery and oil production at Santa Maria, California, and on August 2, 1946, Transwestern Oil Company was merged into Sunray.

Mr. Lloyd Gilmore, of Eastman, Dillon and Company, a firm of New York bankers, has taken a prominent part in Sunray's various mergers and other transactions above referred to. He has acted as a financial advisor and has been helpful in making the necessary arrangements in connection therewith. In March of this year, I learned through Mr. Gilmore that the Getty interests might be willing to dispose of their control of the Pacific Western Oil Corporation (hereinafter called Pacific Western or Pacific). I became interested in the possibility of working out a transaction with the Getty interests because it appeared that a combination of the business activities and properties of Pacific



Western in California and of Skelly Oil Company in the mid-continent area with the business of Sunray would afford enormous advantages to all of the corporations [368] involved, and would greatly strengthen the competitive position of the joint enterprise thereby benefiting the stockholders of these companies.

I learned that Mr. Paul Getty and the so-called Getty Trust owned above eighty-five per cent (85%) of the outstanding stock of Pacific Western Oil Corporation which, in addition to valuable producing oil properties, owns approximately forty-seven per cent (47%) of Mission Corporation. Mission Corporation owns approximately fifty-nine per cent (59%) of Skelly Oil Company.

Skelly Oil Company, like Sunray, is engaged principally in the business of exploring, acquiring interests and developing oil and gas lands, and in the production, purchase, transportation, refining and sale of crude oil and other related products. Unlike Sunray, Skelly is also engaged in the retail marketing and distribution of petroleum products and liquified petroleum gas, having a number of stations throughout the mid-continent area.

I was familiar with the activities of Skelly Oil Company in a general way since Sunray does and has done business with Skelly for a number of years to the mutual advantage of both companies. I have also known Mr. Skelly, President of the Company, personally for a good many years, in business and socially, both of us residing in Tulsa, Oklahoma.

I had frequently spoken to Mr. Skelly about Sunray Oil Company and about my thoughts and ideas of developing it and about the oil business generally. Mr. Skelly was familiar with Sunray's activities and its business and properties.

Pacific Western and Mission Corporation together own a minority interest (30%) in Tidewater Associated Oil Company, which is one of the larger integrated oil companies doing business throughout the United States. I learned that neither Pacific Western Oil Corporation nor Mission, nor both companies together exercise or [369] attempt to exercise any control of Tidewater Associated Oil Company, and that neither the Skelly Oil Company nor Pacific Western Oil Company (nor, of course, Mission Corporation) were in any way integrated with or dependent upon the business activities of Tidewater Associated Oil Company. I also learned that the Department of Justice had taken the position that Skelly Oil Company and Tidewater Associated Oil Company were competitors, and that any combination of these companies would be considered as a violation of the anti-trust laws of the United States. Therefore, it was apparent from the outset of my consideration of the matter that if the companies would merge, the Tidewater stock owned by Pacific Western and Mission would add no business advantage to the merged company, and would represent a large investment unconnected with their activities or businesses and should be disposed of at the earliest possible time that a suitable price could be realized for the stock.

I ascertained from the directors of Sunray that they would give favorable consideration to a plan for the acquisition of the controlling stock of the Getty interests in Pacific Western and the merger of the various corporations controlled by the Getty interests with Sunray, and took up the matter with Mr. Skelly some time in April of 1947. I told Mr. Skelly that I would proceed no further with the matter and would drop it immediately unless I had his full approval and cooperation. He said he saw no objection to the idea and told me to go ahead to attempt to implement it.

At the time I first spoke to Mr. Skelly about the matter I understood that there was still under consideration a proposal for Tidewater to acquire all of the stock of the Getty interests in Pacific Western at \$68.00 per share. There was some doubt, apparently, as to whether this transaction would be approved by the Department of Justice because of the anti-trust implications. [370]

With the full cooperation and approval of Mr. Skelly I authorized Mr. Gilmore to undertake negotiations with the Getty interests in an effort to see whether he could come to some agreement. There then ensued a series a negotiations which started in April or May of 1947, and which resulted in the contract of October 4, 1947, between Sunray and the Getty interests, a copy of which is annexed to the Complaint. From the very commencement of the negotiations I was in touch with Mr. Skelly, keeping him advised from time to time as to its progress. Mr. Skelly and I had numerous discussions

in Tulsa, Oklahoma, and elsewhere. Mr. Skelly also had three conferences with Mr. Gilmore, two in Tulsa and one in New York. At the meetings there was discussed the manner in which the businesses of the various companies could be put together, and the mutual advantages which would ensue therefrom. It was not until some time in July, after the negotiations had made material progress, and Sunray had incurred substantial obligation and expense that Mr. Skelly first expressed a possible objection to a combination of the companies. Prior to that time he always indicated his approval. By that time, however, as I advised Mr. Skelly, the negotiations had progressed too far to drop the matter, and they were continued despite the fact that it then became doubtful as to whether or not we would have the advantage of Mr. Skelly's cooperation.

As a result of negotiations with the Getty interests, it was finally determined that \$68.00 per share was a fair and equitable price for their stock in Pacific Western Oil Corporation subject to the preparation of a satisfactory contract. Sunray was chiefly interested in a merger of the various companies and a combination of their properties and activities, and naturally insisted, as one of the conditions for the purchase, that a merger of the various corporations be consummated. The purchase by Sunray of the stock [371] of Pacific Western owned by the Getty interests was and is, as far as Sunray is concerned, merely incidental to the principal business purposes of the transaction, that is, a merger of the corporations. Such purchase was,



however, a necessary condition to the merger (1) because the Getty interests were only interested in a sale of their stock provided the other stockholders of Pacific Western be afforded the same opportunity to sell their stock at the same price; and (2) for the protection of Sunray's stockholders the managers of Sunray could not be interested in the transaction if the Getty interests or any other group were to remain as controlling or dominant stockholders. The Sunray stock at present is very widely held, no stockholder having more than two per cent (2%) of its stock. It was, therefore, just as important to Sunray in making this transaction as it appears to be to the Getty interests that their stock be purchased for cash, and that they sever their connections with the new corporation.

In drawing up the actual written contract with the Getty interests, both the Getty interests and Sunray insisted that a closing agreement be obtained from the Treasury Department because of the large amount involved and the serious tax consequences which might ensue if the transaction were held to be taxable in a manner not contemplated by the parties. As I understand it, a tax closing agreement with the Treasury Department does not afford any protection against any changes in the law. For this reason, it was insisted by the Getty interests that the transaction be closed in the year 1947 in order not to risk a possible change in the law retroactive to the first of the year which would vitiate a closing agreement if the transaction were closed after the first of the year.

It was clear to both the Getty interests and Sunray that [372] any merger plan had to be fair and equitable to all of the corporations involved, and to their respective stockholders. The Getty interests stated, and it was also a position of Sunray that they would not be parties to any transaction unless the merger in all respects was fair and equitable. Apart from the ethical questions involved, no one connected with Sunray would be naive enough to believe that it would be possible to put through a merger which was not in all respects fair and equitable.

While the negotiations were going on, extensive studies were made of the respective businesses, assets, properties, oil reserves, earnings, production, future prospects and other relevant data as to all corporations concerned to arrive at a formula which would be fair and equitable to the stockholders of all of the corporations.

As soon as there was an accord as to the purchase of the stock of the Getty interests and we were assured by the bankers that the transaction was financially sound and feasible I commenced discussions with Mr. Staples, President of Pacific Western and a director of Mission management with a view to working out a merger. I advised Mr. Skelly as to the progress of the negotiations and requested that he come to California for a meeting with all parties concerned, including Mr. Lloyd Gilmour, but he declined to do so. After the agreement of October 4 for the purchase of the stock held by the Getty interests was signed, I returned to Tulsa and sought there to have Mr. Skelly coop-



erate in working out a merger formula, but it soon became apparent that he was opposing the idea of a merger on any terms, and that it would be useless to seek his cooperation any further.

After it became apparent that Mr. Skelly and the Skelly Oil Company, at his direction, would not cooperate in an endeavor to [373] work out a merger with Sunray, I discussed the matter with Sunray's directors and the bankers, and concluded that if any merger were to be worked out this year it would be necessary to eliminate Skelly Oil Company as a party to the merger. From a business viewpoint, while this result may not be as desirable, it does not actually affect the business reasons for merging the corporations. Eliminating the Skelly Oil Company as a party to the merger, but going ahead with the merger between Pacific Western, Mission Corporation and Sunray would achieve substantially the same result. Skelly Oil Company will become a subsidiary of the merged company and its business activities and properties can be integrated with the business activities and properties of the merged company in the same manner to all intents and purposes as if Skelly Oil Company itself were party to the merger, and the merged company and Skelly will enjoy the mutual benefits of such integration.

The following are examples of the mutual business benefits to be derived from the merger. As of August 31, 1947, Sunray was producing crude oil at a net rate in excess of twelve million barrels per year. Skelly Oil Company as of August 31, 1947, was producing at the net rate of in excess of fifteen

million barrels per year. Skelly's oil refineries have a capacity of approximately 32,000 barrels of oil per day, and when Sunray's new refinery at Duncan, Oklahoma, goes into production in the near future, Sunray's refineries will have a through-put capacity of in excess of thirty-six thousand barrels per day. The combined crude oil production of Sunray and Skelly Oil Company will insure the refineries of both companies a sufficient quantity of crude oil to permit their continuous operation. The crude oil production of both corporations can be used together not only to supply oil directly to the refineries, but for trading purposes with other oil companies to insure [374] a continuous flow of crude oil.

Skelly Oil Company has considerable production in the Velma field in Oklahoma, which is very near to Sunray's new refinery at Duncan, Oklahoma. This use of this production in the Duncan refinery will eliminate transportation charges to Skelly for the oil, and insure an outlet to Skelly Oil Company of its flush production in this field.

Perhaps the greatest advantage to Skelly of a combination of the business activities of both companies will be the ability for Skelly to obtain Sunray's production of gasoline and other refined products. Sunray itself maintains no retail gasoline stations, and therefore, has available a large quantity of gasoline and refined products. Skelly Oil Company, on the other hand, does not produce sufficient gasoline and refined products to satisfy the requirements of its marketing system. It has been having considerable difficulty in purchasing its require-

ments because of the acute gasoline shortage. It has a contract with Sunray at the present time to purchase seven and one-half million gallons of gasoline per year, and its marketing organization has continually sought to purchase more gasoline from Sunray. Sunray, however, must consider its future, and cannot make available to Skelly any substantial portion of its gasoline production without endangering its future ability to sell gasoline to other customers if the situation should change. If Skelly should become a subsidiary of Sunray, on the other hand, Sunray will have the assurance of Skelly's marketing system as a continual outlet for Sunray's production of gasoline and other refined products.

Skelly is also short of liquified petroleum gas, and for this very important adjunct of Skelly's business, Sunray can supply important quantities of this product to Skelly. [375]

Sunray and Skelly can take advantage of their combined resources in exploration and development work to their mutual advantage.

#### Sale of Tidewater Stock

I am advised that plaintiff has sought in its Complaint to stress the sale of Tidewater stock as a possible objection to the transaction. It was determined to sell Tidewater stock not only because it helps in financing the payment to the Pacific Western stockholders who are receiving cash, but because Tidewater is not essential from a business viewpoint to the merged company, and the merged company would not be justified in continuing so large an investment foreign to its business enterprise. More-

over, the Department of Justice has indicated clearly and unequivocally that it regards Tidewater as competitive to Skelly, and a combination of both of these companies under single control as a direct contravention to the anti-trust laws. If the merged company were to continue to hold the Tidewater stock, and indeed if the merger were not consummated, the continuance by Pacific Western and Mission to hold both Tidewater and Skelly would be to incur serious risks under the anti-trust laws. The Department of Justice might commence proceedings to compel a disposition of the Tidewater stock under circumstances and market conditions which might be much less favorable. In my opinion, the price of \$25.00 per share for the price of the Tidewater stock is a fair and equitable price.

#### Ratio of Six Shares of Sunray to One Share of Mission

The ratio of six shares of Sunray to one share of Mission was arrived at after a very careful analysis and study by all parties concerned giving weight to all factors, including the debt and senior securities of the merged company. The analysis showed that after a merger on this basis, the Mission stockholders will have [376] securities representing a direct interest in the equity of the merged corporation, having a greater underlying value, and having greater earnings than they have at the present time, and with a greater market value than in the past.

Much stress is laid by the plaintiff on the value of Skelly Oil Company. It is significant, however,



that the minority stockholders of Mission Corporation do not sacrifice any substantial interest in Skelly Oil Company. At the present time they own fifty-three per cent (53%) of fifty-nine per cent (59%) of the stock of that Company. (The other forty-seven per cent (47%) is owned by Pacific Western Oil Corporation, and would be retired as part of the merger plan.) This gives the minority stockholders of Mission Corporation approximately a 31.27% interest in Skelly Oil Company. As a result of the merger, they lose about 3½% interest in Skelly Oil Company. They end up with a 47% interest in the merged company, including the 59% interest in Skelly Oil Company stock, or a 27.73% interest in Skelly Oil Company. In exchange for this relatively small decrease in their interest in Skelly Oil Company and the loss of their interest in Tidewater Associated Oil Company, they acquire a 47% direct interest in the very valuable assets of Pacific Western Oil Corporation and Sunray Oil Corporation, and all of the benefits of the integration of the operations of Skelly and Sunray. The debt and senior securities now existing in Sunray and resulting from the merger are reasonable and conservative in view of the values of the underlying assets and the earnings of the corporation. Unless this were true, it would not be possible for the corporation to borrow from banks at the rate of 17/8% of the sum of \$14,000,000.00 as it is planning to do, or to sell its debentures and preferred stock to the public with the reasonable interest and dividend rates contemplated. I am informed that [377] plaintiff has sought to create the impression that the



stock of Sunray is of "doubtful value." If this were true, it would not have been or be selling on the New York Stock Exchange at the substantial price, as is the case. An analysis of the underlying assets of Sunray Oil Corporation shows the properties of that company to be well in excess of its debt and senior securities, to more than justify its market price and support the 6 to 1 ratio. Annexed hereto, as Exhibit A, is an evaluation report of the properties of Sunray Oil Corporation and Pacific Western Oil Corporation giving effect to the merger of the two companies, prepared by Harold H. Wasson, an outstanding petroleum engineer of considerable renown and unquestioned integrity. Also annexed hereto is a proxy statement and notice of meeting of Sunray Oil Corporation, which as a further discussion of the business and assets of Sunray Oil Corporation, Pacific Western and Skelly Oil Company.

#### Payment of Dissenting Stockholders

I am advised that plaintiff alleges that stockholders who dissent and seek an appraisal of their shares run the risk that the corporation will not be financially able to pay them. I cannot emphasize too strongly how unsound this is in my opinion. The surviving corporation will have ample assets to pay any dissenting stockholders. If there was any danger of the corporation's inability to pay, it would not be possible to borrow money from banks or to obtain bankers to sell the debentures or to find customers to buy the debentures. Also,

as part of the transaction, there will be sold up to twenty-five million dollars of \$100 par value convertible preferred stock. The rights of the dissenting stockholders will be paramount to those of the new preferred stockholders. Unless there were sufficient equity to warrant the sale of such preferred stock, it is obvious that the preferred stock could not [378] be sold.

Unless there is a sale of the debentures and preferred stock, and unless the loan is made by the banks, and unless there are ample assets to pay all dissenting stockholders the merger will not go through because the Boards of Directors of the three companies involved have reserved the right to abandon the merger. It would appear to be clear, therefore, that there is absolutely no risk or that the corporation will be unable to pay the dissenting stockholders in the event the merger is consummated.

### Anti-Trust Allegations of the Complaint

I am advised that the Complaint contains certain Anti-Trust allegations. Mr. Skelly appeared before the Department of Justice, Anti-Trust Division, in person, and with Senator Burton K. Wheeler as his Counsel, urging the same contentions in an effort to get the Department of Justice to bring proceedings to enjoin the merger. I appeared before the Department of Justice with Counsel for Sunray, and pointed out the inaccuracies of the statements made by Mr. Skelly. There is no substantial competition between Skelly Oil Company and Sunray.

These companies complement or supplement each other and a combination of their activities would result in the creation of a strong, unified enterprise, the better able to meet the competition of large companies. Skelly Oil Company is a retail marketer of gasoline, critically in need of the production of gasoline which Sunray is able to give to Skelly Oil Company because Sunray itself does not distribute gasoline at retail. The combined resources, production and business of the two companies constitutes a very minor portion of the oil business in the United States. Accordingly, the Department of Justice refused to bring the injunction proceedings as requested by Mr. Skelly. Its determination in this regard was announced on [379] Friday, November 14, 1947.

All the Equities Are in Favor of Sunray Oil Corporation, Mission Corporation and Pacific Oil Corporation

Sunray Oil Corporation entered into the negotiations for this merger with the full knowledge and approval of this plaintiff and only when Sunray had obligated itself for substantial sums did this plaintiff evidence any opposition to the merger. It must be recalled that at that time he was not only president of Mission Corporation but Pacific Western Oil Corporation as well and was in the position by his mere approval or disapproval to direct the course of negotiations protecting those two companies. In view of his change of mind after these negotiations had worked to a point where it would

be difficult if not impossible to stop them, places this plaintiff in a very poor position to ask relief of a court of equity at this late date. Mr. Skelly is the owner of approximately 1% of the stock of Mission Corporation and it is inconceivable under the circumstances that he can come into this court and successfully block a merger which has been agreed by the majority of the boards of directors of the companies involved, particularly when the relief he seeks, that is, an injunction will impose undue financial losses on Sunray Corporation which cannot be recovered. Mr. Skelly's rights on the other hand are fully protected by the statutes of Nevada which furnish the complete answer to the demands of a dissenting stockholder. The law not only provides a remedy for a dissenting stockholder but empowers the courts to enforce this remedy. The amount of money Sunray Oil Corporation has been obligated to pay by reason of the voluminous records and documents which have been produced and printed, attorneys' fees, proxy statements and other expenses at the present time approximate \$300,000.00.

Sunray Oil Corporation should be given every protection [380] by this great court of equity to avoid the consequences of this unwarranted litigation precipitated by one dissenting minority stockholder.

The basis of exchange is fair and equitable to the Mission stockholders in all respects. It was arrived at after careful consideration of all pertinent factors. The merger was prompted solely by business

reasons, and I believe it to be to the mutual advantage of the stockholders in all the constituent corporations. If any stockholder disagrees as to the business wisdom of the merger, or the fairness of the treatment he is receiving, the remedy provided by the laws of both Nevada and Delaware for the protection of the dissenting stockholders, in my opinion, affords adequate relief. If plaintiff is successful in obtaining the preliminary injunction he seeks, he will cause irreparable damage to many stockholders of both corporations who are in favor of the merger and who believe it to be to their mutual advantage to have it consummated.

Wherefore, I urge upon this Court that Plaintiff's application for a preliminary injunction in all respects be denied.

/s/ C. H. WRIGHT.

Sworn to before me this 20th day of November, 1947.

[Seal] /s/ MARGARET HUDSON,  
Notary Public in and for Said  
County and State.

My Commission Expires: July 15, 1951.

Service by copy hereby is admitted this 20th day of November, 1947.

/s/ WM. WOODBURN,  
/s/ JOHN P. THATCHER,  
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 20, 1947. [381]



[Title of District Court and Cause.]

## AFFIDAVIT OF FERRO WILLIAMS

State of California,  
County of Los Angeles—ss.

I, Fero Williams, being first duly sworn, depose and say:

That since about May 14, 1942, I have been and now am Assistant Secretary and Assistant Treasurer of Mission Corporation, a Nevada corporation, and I have been since on or about October 19, 1942, and now am a director of Mission Corporation. In addition, I have been since on or about December 16, 1940, and now am Assistant Secretary and Assistant Treasurer of Pacific Western Oil Corporation, a Delaware corporation, and I have been since October 20, 1947, and am now a director of Pacific Western Oil Corporation, and had also been a director of said corporation within the years 1932, 1934, 1935 and 1936. In addition, I have been since about [382] July, 1937, and now am a director of Skelly Oil Company, a Delaware corporation. In addition, during the years 1928 to 1946, inclusive, I was continuously an officer and/or director in many other corporations in which the Getty interests owned either all or a majority of the stock.

My duties over a period of twenty years in connection with services rendered for the referred to corporations included those of controllership, treasurer, accountant, handling all tax matters, executive operating committeeman, and financial analyst and advisor.

I have analyzed, passed upon and personally worked out many of the details of a number of mergers or reorganizations involving the above referred to corporations, the most recently completed merger being that of George F. Getty, Inc., into Pacific Western Oil Corporation on May 31, 1946.

Approximately a year ago, on my own initiative, I made a study and analysis of the possibility of a merger of Skelly Oil Company into Tide Water Associated Oil Company, at which time it was necessary to determine relative valuations of the stocks of these two companies. This study was discussed by me with D. T. Staples, Emil Kluth and T. A. J. Dockweiler.

Upon being advised in March or April of 1947 that Tide Water Associated Oil Company had made a cash offer of \$68.00 per share for the purchase of Pacific Western Oil Corporation stock owned by the Getty interests, I made an analysis of the values of Pacific Western Oil Corporation, Mission Corporation, Tide Water Associated Oil Company and Skelly Oil Company, to ascertain that such purchase price was justified and supportable. My conclusion, as a result of such analysis, was that the \$68.00 per share purchase price by Tide Water Associated Oil Company was justified by the values involved.

In April of 1947, during which time the negotiations [383] with Tide Water Associated Oil Company were being carried on, I was advised that an additional tentative proposal had been made by

Lloyd Gilmour to the effect that in the event the Tide Water Associated Oil Company deal was not consummated an offer of \$58.00 per share would be made to the Getty interests for their Pacific Western Oil Corporation stock, but that such offer would be contingent upon a number of things, including some type of reorganization involving Pacific Western Oil Corporation, Mission Corporation, Skelly Oil Company and Sunray Oil Corporation. I did not go into this matter in detail at that time as I did not believe the Getty interests would be interested in selling their stock for \$58.00 per share, and I was also at that time working upon a proposed merger of Pacific Western Oil Corporation into Mission Corporation. The conclusion I reached in my analysis of the proposed merger of Pacific Western Oil Corporation into Mission Corporation was that in the event such merger took place, the fair basis of exchange of shares would be approximately one share of Mission Corporation stock for one share of Pacific Western Oil Corporation stock.

At a later date, I believe in the month of July, 1947, I was advised that the negotiations with Tide Water Associated Oil Company for the purchase of Pacific Western Oil Corporation stock for \$68.00 per share had been terminated, and that Lloyd Gilmour had submitted an offer of \$68.00 per share for such stock, which offer was contingent upon several things, including the successful consummation of a proposed merger involving Pacific Western Oil Corporation, Mission Corporation, Skelly

Oil Company and Sunray Oil Corporation. It was rumored that the proposed merger would probably result in Mission Corporation stockholders being offered from five to six shares of Sunray Oil Corporation stock for each share of Mission, and Skelly Oil Company stockholders being offered from nine to ten shares of [384] Sunray Oil Corporation stock for each share of Skelly.

Knowing that the Getty interests had been agreeable to selling their Pacific Western Oil Corporation stock to Tide Water Associated Oil Company for \$68.00 per share, I assumed that there was a probability of eventually proceeding with the rumored reorganization, so I undertook to make a detailed analysis and study of the relative values of the various corporations involved, the benefits which might accrue to the stockholders thereof, and of a tentative approximately fair basis of exchange of shares in the event such a merger would be submitted for approval. This analysis and study by me continued up to October 3, 1947, at which time I left Los Angeles for Texas. In the course of making such analysis I collaborated with Mr. Emil Kluth, who is Vice President in charge of the Geological Department of Pacific Western Oil Corporation, Vice President and director of Mission Corporation, director of Skelly Oil Company, and who had been director and president of many of the former Getty corporations referred to in the first paragraph of this affidavit, and with whom I have been closely associated in the oil business for the past twenty years.

My analysis indicated that the rumored basis of exchange of shares to be offered in the proposed merger might be approximately correct, but that if Skelly Oil Company was to be a party to the merger, it would probably require some months to accurately determine an exact fair basis of exchange of shares. Eliminating Skelly Oil Company as a party to the merger, however, indicated that the determination of a fair basis of exchange of shares of Sunray Oil Corporation stock for Mission Corporation stock would be a comparatively simple calculation. My computations had indicated that an exchange ratio of six to one was approximately the fair basis, subject to further verification and investigation of certain factors. My conclusions in this matter were discussed with Mr. Staples, Mr. Kluth, and probably [385] with Mr. Dockweiler and others prior to October 1, 1947.

While in Texas I conferred by telephone with both Mr. Staples and Mr. Dockweiler in connection with the progress being made and the developments arising in connection with the proposed merger. On October 13, 1947, Mr. Staples advised me that in all probabilities Skelly Oil Company would not be included in the proposed merger. I thereupon immediately contacted Mr. Robert Bradley, of the firm of DeGolyer and MacNaughton, with the request that he meet me in Tulsa on October 15, 1947, bringing with him all data he could obtain in connection with Sunray Oil Corporation. I arrived in Tulsa October 14, 1947, and immediately obtained various statements and data from Sunray Oil Corporation, including detailed evaluation report by Harold J.



Wasson, Consulting Engineer, as of March 31, 1946, prospectus of 1946, current operating and financial statements. I questioned various officers of Sunray Oil Corporation and reviewed with Mr. Raymond Kravis a current evaluation report showing tentative estimates of the oil and gas reserves of Sunray Oil Corporation. On October 15, 1947, in the presence of Mr. Dockweiler I questioned Mr. Bradley of DeGolyer and MacNaughton at considerable length upon his opinions as to the reserves, business, assets, etc., of Sunray Oil Corporation.

My first concern in analyzing my final checking of the exchange ratio of shares to be provided in the proposed merger was to determine that such exchange of shares of Sunray stock for Mission stock was fair and equitable to Mission stockholders.

My conclusion was that, after considering all factors involved, a proposed merger providing for the issuance of six shares of Sunray Oil Corporation stock for each share of Mission Corporation stock was fair and equitable to the holders of Mission Corporation stock, and that when such proposed merger was to be submitted to the Board of Directors of Mission Corporation the [386] same should be approved for submittal to the Mission Corporation stockholders for their approval or rejection.

These conclusions, and the reasons therefor, were discussed with Messrs. Staples, Boal, Dockweiler and Kluth prior to the meeting of October 18, 1947, and I had also expressed such conclusion to Mr. Hyden, but had not been afforded the opportunity

of explaining to him all of the factors and evaluations in connection therewith.

Since the meeting of October 18, 1947, Mr. D. T. Staples, President of Mission Corporation, has requested that I make a written report covering the bases and conclusions theretofore presented to him and Directors Dockweiler, Kluth and Boal. There is attached hereto copy of said report.

/s/ FERRO WILLIAMS.

Subscribed and sworn to before me this 19th day of November, 1947.

[Seal]                   DOROTHY HENRY,  
Notary Public in and for said County and State.  
My commission expires May 29, 1949.

Service by copy admitted November 20, 1947.

/s/ WM. WOODBURN,  
One of Attorneys for  
Plaintiff. [387]

REPORT BY FERRO WILLIAMS

November 18, 1947

D. T. Staples, President  
Mission Corporation

Per your request I submit this report of my investigations, analyses, computations and conclusions in connection with the proposed merger of Pacific Western Oil Corporation and Mission Corporation into Sunray Oil Corporation, as approved by the Board of Directors of Mission Corporation on October 18, 1947.

The substance of the data contained herein had been discussed by me with you, Messrs. Kluth, Dockweiler and Boal prior to October 18, 1947.

FERO WILLIAMS.

Investigations and Analyses

A. In 1946 I made an analysis and study of the possibilities and probable results of a merger of Skelly Oil Company into Tide Water Associated Oil Company. In such study it was necessary to determine certain relative valuations of the stocks of these two companies. The fair ratio of my computed valuations of these two stocks at that time appeared to be approximately three shares of Tide Water Associated common stock for one share Skelly stock. This study and analysis was discussed with D. T. Staples, Emil Kluth, T. A. J. Dockweiler and possibly with others.

B. In the early part of the year 1947, upon being advised that Tide Water Associated had made a cash offer of \$68.00 per share for the controlling stock interest in Pacific Western, I made an analysis of the values of Pacific Western based upon evaluations of its directly owned assets, and of the assets of Mission Corporation and Skelly. My conclusion, as a result of such analysis, was that the purchase price of \$68.00 per share was justified and supportable by the values involved.

C. Thereafter, or at the same time, I was working on the details of a proposed merger of Pacific Western into Mission in order to determine a fair and equitable basis of exchange of shares. At that

time Mr. Skelly was President of Mission, and the minutes of the meeting of the Board of Directors of Mission held in Reno, Nevada, in May, 1947, refer to proceedings in connection with such proposed merger. When this particular merger was first contemplated, D. T. Staples, Arch H. Hyden, W. G. Skelly and I had a conference with E. DeGolyer, of the firm of DeGolyer and MacNaughton. This conference was held at the Waldorf Astoria Hotel in New York City, and at which conference the proposed merger was discussed with the firm of DeGolyer and MacNaughton [390] was employed to appraise and evaluate the properties of Pacific Western, but not the properties of Skelly, a subsidiary of Mission. From all recollections that I have of the discussions had at this conference it was not deemed necessary to appraise the properties of Skelly as that company was not to be a party to the merger. This was the same position that had been taken in the merger of George F. Getty, Inc., into Pacific Western as of May 31, 1946, prior to which time DeGolyer and MacNaughton had been employed to compute the equitable basis of exchange of shares. An appraisal was not made of the Skelly properties at that time. All my studies and analyses in connection with this proposed merger excluded computations of value of the properties of Skelly Oil Company. The conclusion I reached in such analyses was that in the event such merger took place, the fair basis of exchange of shares would be approximately one share of Mission stock for one share of Pacific Western stock. Such conclusion,

and basis therefor, was discussed with Messrs. Staples, Dockweiler, Kluth, Boal, Hyden and others.

D. I was advised that Tide Associated had been prevented by the anti-trust division of the Department of Justice from purchasing the Pacific Western Oil Corporation stock at \$68.00 per share. I was also advised that Lloyd Gilmour had submitted several offers to the Getty interests to purchase their Pacific Western stock at a final offer price of \$68.00 per share. This offer, as I understood it, was contingent, however, upon several things, including the successful consummation of a proposed merger involving Pacific Western, Mission, Skelly and Sunray Oil Corporation. It was rumored that the proposed merger would provide that Mission stockholders would be offered from five to six shares of Sunray stock for each share of Mission stock, and Skelly stockholders would be offered from nine to ten shares of Sunray stock for each share of Skelly stock. [391] Assuming that the price of \$68.00 per share would probably be acceptable to the Getty interests, and further, that eventually proceedings would be taken in connection with the rumored reorganization, I undertook to make a detailed analysis and study of the relative values of the various corporations involved, of the benefits to be derived from such proposed merger, and of a tentative approximately fair basis of exchange of shares in the event such proposed merger should be submitted for approval.

These analyses were continued by me from July, 1947, to October 18, 1947. In the course of such analyses I conferred many times with Messrs.



Kluth, Staples, Dockweiler and others. This rumored proposed merger was well known in July, 1947, by all members of the Mission Board as articles about the same had appeared in newspapers and through brokerage office releases. In fact, it was discussed at the Skelly Board of Directors meeting in the month of July, and during such meeting Mr. Skelly dictated a news release in connection therewith. From prior experience in connection with various mergers I concluded that although the rumored basis of exchange of shares might be approximately correct, it would probably require some months to accurately determine an exactly fair basis of exchange of shares if Skelly was to be a party to the merger. By the elimination of Skelly as a party to the proposed merger, it appeared that fair basis of exchange of Sunray shares for Mission shares could be readily determined, particularly as such a determination would not necessitate an appraisal of the properties of Skelly. Prior to October 3, 1947, I had made an analysis from data available to me and my computations indicated that an exchange ratio of six shares of Sunray stock for one share of Mission stock was an approximately fair basis, subject of course to further investigations and verifications of certain factors involved in my calculations. My conclusions in this matter were discussed with Messrs. Staples and Kluth and others prior to October 3, 1947. [392]

E. I was in Texas from October 4 to October 13, during which time I conferred by telephone with

Mr. Staples several times and also with Mr. Dockweiler as to the progress being made and the developments arising in connection with the proposed merger. On October 13 Mr. Staples advised me by telephone that Skelly would in all probabilities be eliminated as a party to the proposed merger. I thereupon immediately contacted Mr. Robert Bradley of DeGolyer and MacNaughton with the request that he meet me in Tulsa on October 15, bringing with him all data he could obtain in connection with Sunray. He advised me at the time that, due to the various rumors he had heard, he had anticipated such a request and had been assembling such requested data for a period of about ten days prior to my request.

Upon arriving in Tulsa on October 14, I immediately obtained various statements and data from Sunray, including a detailed evaluation report made as of March 31, 1946, by Harold J. Wasson, consulting Engineer, a prospectus of Sunray which was used in its financing in 1946, and current operating and financial statements. I questioned various officers of Sunray, and conferred with Mr. Raymond Kravis, who was making a current evaluation report of Sunray, which included tentative current estimates of the oil and gas reserves of Sunray. Such tentative estimate, as shown by his calculations, was 185,000,000 barrels. I carefully analyzed all data and information. I had thus obtained, checking it with my previously accumulated knowledge or data in connection with Sunray. On October 15, in the presence of Mr. Dockweiler, I questioned Mr. Brad-

ley closely in connection with various data he had accumulated in connection with Sunray, and checked such data with that which I had in my possession. I also questioned him in connection with the assets of Sunray, its history, its reputation, its management, its business prospects and, more particularly, the reasonableness of the oil and gas reserves as set out in the report of March 31, 1946, by Mr. Wasson, and also as to the standing of Mr. Wasson as a Consulting Engineer. [393]

Until the meeting of October 18, 1947, I continued to check and recheck, and add to, my various computations and analyses supporting my conclusion that after considering all factors involved the exchange ratio of six shares of Sunray stock for one share of Mission stock was fair and equitable to all Mission stockholders.

My various computations, analyses, conclusions and reasons therefor were discussed at considerable length with Messrs. Staples, Boal, Dockweiler and Kluth prior to October 18, and I had also expressed such conclusions to Mr. Hyden, but had not been afforded the opportunity to explain to him in sufficient detail the calculations, bases therefor, etc., as he did not seem to be receptive to any arguments or recommendations that the proposed merger should be submitted to the Mission Board of Directors on October 18 for action thereon. He neither agreed nor disagreed with me as to my conclusions but indicated that if Mr. Skelly would oppose any voting upon the proposed merger agreement by the Board of Mission on October 18, he would vote with Mr. Skelly.

I did not attempt to contact Mr. Skelly and discuss this matter with him, as I felt that he was probably as well informed as I on the matter, and believed that he would not be receptive to any presentations by me, or be at all interested in my conclusions and analyses.

The foregoing has been a summary of my activities, and of the periods of time during which I had this matter, and other related matters, under consideration and study. There is set out hereafter in some detail under various captions a number of the factors taken into consideration by me in reaching my conclusions. [394]

#### Stock Market Values

Mission has approximately 30,000 stockholders. It is my conclusion that the principal interest and concern of a great majority of stockholders of large corporations are in the stock market quotations for their stock, and in their dividend receipts. The latter is quite often a factor governing the former.

There is attached hereto as Exhibit VI a statement showing the stock market high and low quotations for Mission, Skelly, Tide Water, Pacific Western and Sunray for each month from January, 1946, to September, 1947, inclusive. On referring to such statement it will be noted that for Mission the average high was \$37.88 and the average low \$32.84, and for Sunray the average high \$10.63 and the average low \$8.96. The statement also shows the the average middle points between the average highs and average lows. This figure was considered to be

a logical basis for comparing average market prices of the stocks shown on such statement. Such assumed average market price for Mission is \$35.36 and for Sunray \$9.80; therefore, the assumed market value of six shares at \$9.80 is equal to \$58.80, which is \$23.44 greater than the \$35.36. When reduced to percentages, it shows that \$58.80 is 166% of \$35.36.

A computation was then made that if one share of Mission stock had an average market price of \$35.36 and it was converted into six shares of Sunray stock, which had an average price of \$9.80, the Mission shareholders would gain \$23.44 in average market price for their stock, or 66% gain.

My conclusion was that the market price of Mission stock on October 17, 1947 (that is, approximately \$54.00) was not in any sense a true reflection of a normal market price for such stock. For quite some time the rumored proposed merger and approximate terms thereof had been a matter of public knowledge, particularly to traders in stocks. This, in my opinion, was the reason that Mission stock was selling for an abnormally high price in the month of October—that is, solely because of [395] reports of the proposed merger. Had there never been any public knowledge of such proposed merger, I believe that the market price of Mission stock would probably have been below \$40.00.

On October 17, 1947, Sunray stock had a market value of approximately \$11.50 per share. This was not an unusually inflated market value as compared with the then inflated market value of Mission.



(Refer to Exhibit VI.) Regardless of this apparent inequity in then existing market values, six shares of Sunray at \$11.50, or \$69.00, was \$15.00 greater than the then abnormally inflated market value of \$54.00 for one share of Mission, or 128% thereof, a gain of 28% in computed market values.

Assuming that there had been no considerations of any merger whatsoever, and further assuming that the \$35.36 represented an average market price for Mission stock and \$9.80 for Sunray stock, an exchange of shares based upon such market value assumptions would be that one share of Mission stock was worth 3.6 shares of Sunray stock, instead of the one to six basis set out in the proposed merger.

As a further analysis of market values of Mission stock, the following was considered. In 1946 DeGolyer and MacNaughton submitted the following data in a report in connection with the merger of George F. Getty, Inc., into Pacific Western:

Mission Corporation Stock

	Market High	Market Low	Dividends Paid
Year 1938	17- $\frac{3}{4}$	10- $\frac{5}{8}$	\$1.00
1939	14- $\frac{7}{8}$	8- $\frac{3}{4}$	.65
1940	11- $\frac{3}{4}$	7- $\frac{1}{8}$	.25
1941	15- $\frac{1}{2}$	9- $\frac{3}{8}$	.85
1942	14- $\frac{3}{4}$	8- $\frac{3}{4}$	.85
1943	25	13- $\frac{5}{8}$	1.00
1944	23- $\frac{1}{2}$	17- $\frac{3}{4}$	1.25

From the above I made the following calculations:

Average highs 17- $\frac{4}{8}$ , average lows 10 $\frac{7}{8}$ , average middle point 14, average dividend per year \$.84.

There is an old and established stock market theory that stocks should sell for about twenty times their dividend payments. Twenty times the above computed average dividend rate of \$.84 equals \$16.80, an assumed normal expected market price for Mission stock on such theory. This computation, however, shows that Mission stock in the seven-year period covered by the report did not normally sell for twenty times its dividend rate, but only sixteen and two-thirds times. (\$14.00 [market] divided by \$.84 [dividend] equals sixteen and two-thirds.)

Using such past records as a basis of what Mission market value had been in relation to dividends, I checked it with the market values shown on Exhibit VI to ascertain a ratio for a more current period. In 1946 and 1947 Mission paid \$1.50 per share dividends. The average market price was, per Exhibit VI, \$35.36 per share, or 23.57 times its dividend rate. The following calculations were then made to determine possible or probable future market values of Mission stock in event there was no merger, and that its dividend payments might increase to the amounts as shown:

Dividend Rate	Computed Market Value	Computed Market Value
	at 23.57 Times Possible	at 16 $\frac{2}{3}$ Times Possible
	Dividend Rate	Dividend Rate
\$1.50	\$35.36	\$25.00
1.75	41.25	29.16
2.00	47.14	33.33
2.25	53.03	37.50
2.50	58.92	41.66

The above computations, with reference to the market values being 23.57 times the dividend rate,

are extremely optimistic, however, when considering such possibilities of increased dividends and the market value remaining at 23.57 times dividends for this particular stock. Mission's income, which provides it with the funds with which to pay dividends, comes from dividends received from Skelly and Tide Water. The majority of such income is from Tide Water and there is no basis to expect the Tide Water dividends to substantially increase. That company has just advanced its annual dividend rate to \$1.20 per share, and I do not expect any increase in the foreseeable future. Skelly, although reporting substantial book profits, has not had excess available funds from which to pay substantially increased dividends, and from my knowledge [397] of the affairs of that company and its cash requirements for its projected improvements to its refinery, its repressuring projects, development program, new gasoline plant investments, etc., I do not expect any substantial increase in its dividend payments. Therefore, as to the possible market value of Mission stock being projected at 23.57 times dividends, I believe this to be an erroneous assumption for two reasons. I believe that the average market value as shown in the statement in Exhibit VI has been influenced in this particular period of time by rumors of the proposed merger, beginning in the month of July, 1947, through September, 1947, and also, during the period from April, 1946, to July, 1946, when there were other rumors and speculations on the possibility of including Mission

in the merger of George F. Getty, Inc., into Pacific Western. If that merger had not occurred and if the present proposed merger had not become a matter of speculation, I do not believe that the average market price for Mission stock, as computed in Exhibit VI, would have been \$35.36 per share, but would have been a smaller amount. It would probably have been closer to sixteen and two-thirds times the dividend rate, its average market price during the seven-year period from 1938 to 1944, inclusive, during which time there were no speculative rumors as to the possibilities of its becoming a party to a merger. The twenty to one ratio is usually applicable to computations of stock values of conservative companies, such as the Standard Oil Companies and similar companies, who retain a very substantial part of their earnings for reinvestment in their business, and thereby should appreciate the market value of their shares. Such is not the case with Mission as it pays out to its stockholders practically all of its income and therefore does not have a comparable element of possible appreciation attached to the market value of its stock. In normal times this should result in the market value of Mission stock more nearly approximating a sixteen and two-thirds to one ratio instead of the 23.57 to 1 ratio as shown, or even a 20 to 1 ratio. [398]

Mission is what is commonly known as a holding company, and practically all of the values of its assets are represented by ownership of Tide Water and Skelly stock. The market values of the stocks

of holding companies usually reflect a double discount of evaluations of indirect equity ownerships, and therefore the market values of stocks of holding companies are not as attractive as market values of companies which have direct ownership of assets. For example, refer to Exhibit VI, which shows Skelly stock average market price of \$70.62, and Tide Water \$20.46. Unquestionably, the net asset evaluations of each of these companies divided by the number of shares outstanding would produce an evaluation per share far in excess of the quoted market prices for the shares. The market values of stocks of even operating companies, therefore, represent substantial discounts of the computed underlying net assets of such companies.

The market values of holding companies are again discounted by the same process, reflecting a discount on a discount. Refer to Exhibit VI for calculations showing this further market discount of Mission stock. It has sold for discounts of approximately 30% of the market values for Tide Water and Skelly, which in themselves represent a substantial discount of computed net asset values of the companies. Obviously any merger which would place the ownership of assets by a corporation one step closer to ownership by the stockholders should eliminate a disadvantageous and actual double discount in the reflection of market values for such stock. This market advantage had been considered in a proposed merger of Pacific Western and Mission.



When considering:

a. That any Mission stockholder who did not wish to convert his shares to Sunray could not be forced to take stock in Sunray, but was protected by the laws of Nevada as to the value of his Mission stock;

b. That if a Mission stockholder wished to dispose of his Mission stock on the open market, he could probably realize a higher price for his shares than at any time in the past due to the abnormal increase in market values, resulting from the merger possibilities;

c. That a continuing Mission stockholder would receive Sunray stock having a market value far in excess of the computed normal market value of Mission (\$35.36 per share);

d. That a continuing Mission stockholder would own stock in Sunray, which would not be a holding company to the same extent as Mission, and the future market values should not reflect a double discount of values;

e. That any appreciation in value of the present oil properties of Sunray or Pacific Western should be beneficial to the market values of Sunray stock to be received;

f. That those continuing Mission shareholders would not give up indirect equity ownership in assets of Skelly to any substantial percentage, but as stockholders of Sunray would probably eventually benefit in the market

value of Sunray upon possible future consolidation or liquidation of Skelly into Sunray with further eliminations of market discounts; and

g. That even if the Sunray stock to be received by the Mission stockholders, as a result of the merger, had a market value of only \$7.00 per share, the total of \$42.00 market value for six shares would represent as great or greater value than I would expect to be the market value of Mission stock in the event no merger is consummated, [400]

I came to the conclusion that the proposed merger, in which Mission stockholders would receive six shares of Sunray for each share of Mission, would be for the best interests of all Mission stockholders from a market value of stock standpoint, which is, in my opinion, the real yardstick which a stockholder uses in determining the actual value of his stock. [401]

#### Dividend Expectations by Mission Stockholders

The question of amount of dividends to be reasonably expected is, in my opinion, a very important consideration when analyzing the value of any stock. This is particularly true, I believe, from the standpoint of smaller stockholders, who may depend upon dividend income, and from the standpoint of investors seeking a fair or good return on their investment. There are approximately 30,000 stockholders of Mission, and undoubtedly many thousands of those stockholders are primarily interested

in the dividends which they might reasonably expect to receive.

Any expectation of dividends to be paid by Mission is contingent entirely upon a further expectation of dividends to be received by it from Tide Water and Skelly (See Exhibit IV-A). I do not anticipate any further increase in the recently increased dividend rate of \$1.20 per share by Tide Water. It is possible that Skelly might gradually increase its present dividend rate of \$2.50 per share, but I believe that \$5.00 per share would be the maximum possible amount.

Exhibit VIII, attached hereto, is a computation of reasonable dividend expectancies of \$2.00 or \$3.00 per share to present Mission shareholders, providing that Mission pays out practically all of the earnings as computed in said statement.

Exhibit IX, attached hereto, is a computation of reasonable dividend expectancies of \$3.78 or \$4.26 to present Mission shareholders if the merger is approved and six shares of Sunray stock received. These amounts represent only one-half of the computed net income of Sunray being distributed.

Exhibit X, attached hereto, is a computation similar to those in Exhibit IX, and shows such reasonable expectancies as being \$3.63 or \$4.11.

Upon comparing the information set out in Exhibits VIII, IX and X, I concluded that the proposed merger, providing for an exchange of six shares of Sunray stock for one share of Mission stock, would give the present stockholders of Mis-

sion an opportunity to increase their dividend income by at least 50%. [402]

### Status of Mission Corporation

A reference to Exhibit IV will show that Mission is what is commonly termed a "holding company."

Of the 1,374,145 shares outstanding, Pacific Western owns 641,808 shares, or approximately 47%. The Getty interests in turn own approximately 85% of Pacific Western. It can be seen that Mission is in the proximity of being classed as a "personal holding company."

As either a "holding company" or a "personal holding company," there is little probability that Mission could materially increase its directly owned equity investments. Its value therefore depends, to a major extent, upon the market value of Skelly and Tide Water stocks, a factor which is not within the control of Mission's management. Its source of income (See Exhibit IV-A) depends upon the dividends declared by Tide Water and Skelly. Any great appreciation of any assets owned by Tide Water or Skelly is doubly discounted in the reflection thereof in the market values of Mission stock.

There have been from time to time discussions as to the possibility of some judicial order or regulation which might require Mission to divest itself of its Tide Water stock, which might be very detrimental to the values of Mission stock.

The disadvantageous status of Mission has for a number of years been under frequent discussion.

It cannot be dissolved under Nevada law without the affirmative vote of two-thirds of the stockholders, and there is no possibility of this, as Pacific Western owns approximately 47% of the Mission stock and could not, from a practical standpoint, agree upon a dissolution of Mission.

Many stockholders of Mission have from time to time expressed a desire for the opportunity of "cashing in" on their Mission stock at values greater than the normal market values which were subject to double discounts. This proposed merger gives such stockholders the first opportunity to do so. [403]

After due considerations of these factors, which I considered to be disadvantageous or detrimental to the market value of Mission stock, I concluded that a submission of the proposed merger to the Mission stockholders was highly advisable so that each stockholder would have an opportunity to make his own decision as to his personal desires in the matter. [404]

#### Continuing Equity Interest of Mission Stockholders Using Certain Stock Values

An analysis of the continuing equity interest of present Mission stockholders was made. Refer to Exhibit VII, which shows that the present Mission shareholders have a 53.294% indirect equity ownership of the net assets of Mission. After the merger they would have a 47.1596% indirect equity ownership of the net assets of Sunray.



Exhibit XI was prepared to show an evaluation of such indirect equity ownership. This statement has four separate calculations. It shows Skelly stock at the then market of \$91, and further arbitrary market values of \$125, \$150 and \$175 per share for such stock. By using such stock market values, the statement shows arbitrary values per share of \$64.35, \$78.77, \$89.37 and \$99.97.

Exhibit XII was prepared to show a similar or comparable evaluation of six shares of Sunray, following the proposed merger. Such computations show \$67.74, \$80.52, \$89.88 and \$99.24. It will be noted from such Exhibit XII that the price of \$11.50 per share for Sunray stock value was constant in all four calculations, whereas Skelly stock value was increased, which was to offset any possible contention that the market value of Skelly stock was not as closely approximating the real underlying value of the stock as the market value of Sunray stock was to its real underlying value.

The results of this investigation and analysis further substantiated the fairness of the six to one basis of exchange, [405]

#### Continuing Equity Interest of Mission Stockholders in Skelly and Tide Water Stock Values

As shown in Exhibit VII, the continuing Mission stockholders would have a 47.15796% of the stock of Sunray, in lieu of the present 53.294% of the stock of Mission.

Exhibit XIII was prepared to show this continuing equity in the values of Tide Water and

Skelly stock, including the 47.15796% interest that Mission stockholders would acquire in the 577,854 shares of Tide Water now owned by Pacific Western. This statement contains various computations, calculations and comments which should be conclusive evidence that Mission shareholders should gain a substantial equity in market values of the two stocks, as a result of the merger. Such gain should be an amount between the amount of \$1,494,483, as shown in A of page 1 of Exhibit XIII, and the amount of \$278,714, as shown in B of the same statement, the amount of gain being determined by the fluctuations of the market values of Tide Water and Skelly. [406]

#### Acquiring Equity Interests of Mission Stockholders Other Than Tide Water and Skelly Stocks

In the prior comments on Page 19, it was assumed that the continuing equity interest of Mission stockholders would not be adversely affected as to Tide Water and Skelly stocks when considering the combined values thereof.

Exhibit XIV shows various calculations made indicating that other equity values acquired more than offset indirect assumption of \$100,000,000 new debt.

I concluded that the computed net gain of \$22,738,285 equity values over assumed liabilities was ample protection to Mission shareholders verifying this phase of the fairness of the exchange ratio of six to one. [407]

## Evaluation Statements

Evaluation statements were prepared to show an evaluation of the shares of Sunray, Mission, Pacific Western and also Skelly. Such statements (attached hereto) and figures shown thereon are summarized as follows:

Company	Exhibit	Net Evaluation	Per Share
Sunray	XV	\$104,625,043	\$ 21.25
Skelly	XVI	\$231,134,482	\$235.53
Mission	XVII	\$172,636,568	\$125.63
Pacific Western	XVIII	\$135,211,335	\$ 98.57

These evaluation exhibits include therein explanations of the methods I used in my evaluations, the source of my information, and the basis for using such methods of evaluating assets. Although such methods may not be strictly in accordance with more conventional types of evaluation reports, I felt that the same were just as practical in arriving at a reasonable answer, which was in itself merely a substantiation of prior conclusions.

From the above calculated evaluations per share it can be seen that the ratio of Mission \$125.63 to Sunray \$21.25 is 5.91 to 1, instead of the 6 to 1 in the proposed merger. This computation verifies, from this phase of my analyses, that the proposed merger ratio of 6 to 1 is fair and equitable to Mission stockholders. [408]

Consolidation of Evaluations of Sunray,  
Mission, Pacific Western

The following computations and comments may be of interest.

Sunray evaluation	Exhibit XV	\$104,625,043 or \$ 21.25 per share	
Mission evaluation	Exhibit XVII	\$172,636,568 or \$125.63 per share	
Pacific Western evaluation	Exhibit XVIII		
Total .....		\$135,211,335	
Less Mission included .....		80,630,339	54,580,996
Subtotal .....			\$331,842,607
Less Debt & Merger Costs.....			100,000,000
Evaluation of 9,317,668 Shares.....			\$231,842,607
Value Per Share .....			\$24.88

This shows an increase of \$3.63 for Sunray (\$24.88 less \$21.25)

This shows an increase of \$23.65 for six shares of Sunray over the \$125.63 for one share of Mission.

It appears that the evaluations of Sunray applicable to the entire 9,317,668 shares will increase \$3.63 per share, or \$33,846,770, as a result of the merger.

This would be true, as the Pacific Western evaluations shown in Exhibit XVIII of \$135,211,335 are being purchased for \$93,300,000. Evaluations are also reduced by the costs of the merger.

Both present Sunray and Mission shareholders benefit in evaluation increases due to the purchase of Pacific Western stock at a discount of such evaluation amounts. [409]

**EXHIBIT I****Mission Corporation****Balance Sheet**

August 31, 1947

**Assets****Current Assets**

Cash in Banks and on Hand.....	\$ 1,335,829.82		
U. S. Gov't Securities (at cost).....	100,000.00		
Accounts Receivable .....	354,281.57		
Inventories—Crude Oil .....	422.24	\$ 1,790,533.63	

**Investment in Other Companies**

1,345,593 shares Tide Water Assoc.			
@ \$10.36 .....	\$13,938,216.29		
582,657 shares Skelly Oil @ \$7.2947....	4,250,289.45	18,188,505.74	

**Fixed Assets**

Leases .....	\$ 208,988.84		
Royalties .....	65,973.85		
	<u>274,962.69</u>		
Less: Reserves .....	181,248.28	93,714.41	
Intangible Development			
Costs .....	\$ 56,107.40		
Less: Reserves .....	56,107.40		
Plant and Equipment....	\$ 79,718.69		
Less: Reserves .....	56,236.91	23,481.78	
Furniture & Fixtures .....	\$ 2,608.00		
Less: Reserves .....	180.00	2,428.00	119,624.19
<b>Total Assets .....</b>			<b>\$20,098,663.56</b>



## Liabilities

## Current Liabilities

Accounts Payable .....	\$	2,298.15	
Accrued Taxes—Misc. ....		433.01	
Accrued Taxes Withheld on Dividends..		1,746.94	
Reserve for Federal Income Taxes.....		184,386.82	\$ 188,864.92
			<hr/>

## Capital Stock and Surplus

Capital Stock \$10.00 par value—			
1,500,000 Authorized			
Issued 1,379,545 shares @ \$10.00.....	\$13,795,450.00		

## Earned Surplus

Earned Surplus 1/1/47 \$5,535,831.99			
Profit 1947 to 8/31/47..	1,673,417.90		
		<hr/>	

\$7,209,249.89

## Less: Dividend Paid

6/30/47 .....	1,030,608.75	6,178,641.14	
		<hr/>	

\$19,974,091.14

## Less: 5,400 shares Common

Stock in Treasury		64,292.50	
		<hr/>	

1,374,145 Common shares Outstanding  
and Surplus .....

19,909,798.64

Total Liabilities .....

\$20,098,663.56

## EXHIBIT I-A

Mission Corporation  
Statement of Income  
Eight Months Ended August 31, 1947

## Oil Operations

Habiger Lease Sales—Gross	\$	155,404.38	
Less Royalties .....		36,313.53	
Net Sales .....	\$	119,090.85	
Other Lease Income ....		64.00	
Subtotal .....	\$		119,154.85
Less:			
Production Expense ....	\$	9,562.49	
Depreciation .....		3,367.00	
Depletion .....		7,160.00	20,089.49
Habiger Lease Net Income .....	\$		99,065.36
Depletion of Royalty			
Interests .....	\$	6,520.00	
Less Royalties Received..		2,393.96	
Net Loss Royalties			4,126.04
Net Income Oil Operations .....	\$		94,939.32

## Other Income and Expense

## Income

## Dividends

Tide Water Associated	\$1,009,194.75	
Skelly Oil Company....	728,321.25	\$ 1,737,516.00

## Interest—

Government Securities		2,105.40
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Total Other Income \$ 1,739,621.40

## Expenses

## Executive and General

Expenses .....	\$ 35,402.93
New Jersey Offices—Net	753.88
Stock Record's Office .....	12,368.02
Nevada Office .....	5,480.15
Registrar Expense .....	658.90
Transfer Agents' Expense	644.06
Taxes Other Than	
Federal Income .....	4,834.88

Total Other Expenses	\$ 60,142.82
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Net Other Income.....	1,679,478.58
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Net Income Before Federal Income Taxes.....	\$1,774,417.90
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Less Provision for Federal Income Taxes.....	101,000.00
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Net Income for Period.....	\$1,673,417.90
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## EXHIBIT II

Pacific Western Oil Corporation  
Consolidated Comparative Balance Sheet  
August 31, 1947

	Assets		
	August 31 1947	July 31 1947	Increase Decrease—
<b>Current Assets</b>			
Cash .....	\$ 2,767,057.55	\$ 2,779,000.16	\$ 11,942.61-
U. S. Government Securities .....	630,385.36	630,390.66	5.30-
Notes Receivable .....	89,072.00	89,072.00	
Accounts Receivable .....	897,622.53	839,605.44	58,017.09
Dividends Receivable— Tide Water Assoc. Oil Co. ....	144,463.50		144,463.50
Inventories .....	653,824.48	627,443.69	26,380.79
<b>Total Current Assets</b> \$	<b>5,182,425.42</b>	<b>4,965,511.95</b>	<b>\$216,913.47</b>
<b>Investments in Common Stocks</b>			
Mission Corporation (46.71%) 641,808 Shares at \$15.50 .....	9,947,084.88	9,947,084.88	
Tide Water Associated Oil Co. 577,854 Shares at \$6.80 .....	3,927,006.95	3,927,006.95	
Other .....	112.00	112.00	
<b>Total Investments</b> (At Cost) .....	<b>\$13,874,203.83</b>	<b>\$13,874,203.83</b>	
<b>Fixed Assets</b>			
Lands, Leases, Royalties.	\$13,366,947.44	\$13,337,569.25	\$ 29,378.19
Less Reserves .....	7,395,283.47	7,373,499.21	21,784.26
Net .....	\$ 5,971,663.97	\$ 5,964,070.04	\$ 7,593.93
<b>Equipment and Drilling</b>			
Costs .....	\$23,514,247.66	\$23,286,499.50	\$227,748.16
Less Reserves .....	18,981,898.75	18,943,382.82	38,515.93
Net .....	\$ 4,532,348.91	\$ 4,343,116.68	\$189,232.23
<b>Subtotal</b> .....	<b>\$10,504,012.88</b>	<b>\$10,307,186.72</b>	<b>\$196,826.16</b>
<b>Hotel Properties (Includ- ing land cost of \$1,000,000) .....</b>	<b>\$ 3,318,198.09</b>	<b>\$ 3,262,842.28</b>	<b>\$ 55,355.81</b>
Less Reserves .....	647,392.73	633,712.79	13,679.94
Net .....	\$ 2,670,805.36	\$ 2,629,129.49	\$ 41,675.87
<b>Net Fixed Assets</b> .....	<b>\$13,174,818.24</b>	<b>\$12,936,316.21</b>	<b>\$238,502.03</b>
<b>Organization &amp; Merger Costs.</b>	<b>\$ 314,500.78</b>	<b>\$ 314,500.78</b>	
Less Reserves .....	197,325.85	194,396.48	\$ 2,929.37
Net .....	\$ 117,174.93	\$ 120,104.30	\$ 2,929.37-
<b>Prepaid and Deferred Charges</b> Rentals, Taxes, Insurance, etc. ....	\$ 354,972.16	\$ 358,133.20	\$ 3,161.04-
<b>Total Assets</b> .....	<b>\$32,703,594.58</b>	<b>\$32,254,269.49</b>	<b>\$449,325.09</b>

Pacific Western Oil Corporation  
Consolidated Comparative Balance Sheet  
August 31, 1947

	Liabilities		
	August 31 1947	July 31 1947	Increase Decrease—
<b>Current Liabilities</b>			
Accounts Payable .....	\$ 816,987.66	\$ 672,824.09	\$144,163.57
Royalties Payable .....	175,911.64	165,886.07	10,025.57
Wages Payable .....	33,670.64	41,446.54	7,775.90-
Interest Payable .....	25,203.13	24,504.38	698.75
Misc. Accrued Liabilities Taxes Accrued— Other than Income .....	32,387.44	49,242.74	16,855.30-
Provision for Federal and State Income Taxes .....	147,299.74	90,814.90	56,484.84
	297,318.36	296,468.36	850.00
<b>Total Current Liabilities</b> .....	<b>\$ 1,528,778.61</b>	<b>\$ 1,341,187.08</b>	<b>\$187,591.53</b>
<b>Deferred Credits</b> .....	<b>\$ 652.54</b>	<b>\$ 887.16</b>	<b>\$ 234.62-</b>
<b>Capital Stock and Surplus</b>			
Capital Stock—\$10.00 Par Value Common 2,000,000 Shares Authorized 1,376,430 Shares Issued at \$10.00 .....	\$13,764,300.00	\$13,764,300.00	
<b>Surplus</b>			
Paid In Surplus.....	\$ 5,382,136.54	\$ 5,382,136.54	
<b>Earned Surplus</b>			
January 1, 1947, adjusted .....	\$ 9,857,636.60	\$ 9,857,636.60	
Profit Year to Date..	2,270,930.94	2,008,962.76	\$261,968.18
	\$12,128,567.54	\$11,866,599.36	\$261,968.18
<b>Total Surplus</b> .....	<b>\$17,510,704.08</b>	<b>\$17,248,735.90</b>	<b>\$261,968.18</b>
<b>Total Capital Stock &amp; Surplus</b> .....	<b>\$31,275,004.08</b>	<b>\$31,013,035.90</b>	<b>\$261,968.18</b>
Less 4700 Shares Common Stock in Treasury .....	100,840.65	100,840.65	
<b>1,371,730 Common Shares Outstanding &amp; Surplus</b> (Per Share \$22.73)	<b>\$31,174,163.43</b>	<b>\$30,912,195.25</b>	<b>\$261,968.18</b>
<b>Total Liabilities</b> .....	<b>\$32,703,594.58</b>	<b>\$32,254,269.49</b>	<b>\$449,325.09</b>





## EXHIBIT II-A

## Pacific Western Oil Corporation

## Consolidated Comparative Statement of Income

August 31, 1947

## Gross Operating Income

	Month of August	Month of July	Year 1947 to Date
Net Sales and Royalties.....	\$574,589.46	\$587,420.75	\$3,998,396.28
Other Operating Income .....	18,399.38	14,941.45	105,028.23
	<hr/>	<hr/>	<hr/>
Total Operating Income..	\$592,988.84	\$602,362.20	\$4,103,424.51
	<hr/>	<hr/>	<hr/>

## Operating Charges

Operating Expense—Net .....	\$101,298.89	\$100,030.89	\$ 764,193.28
Undeveloped Lease, Rent & Expense .....	22,790.54	27,694.73	211,827.47
Exploration Work and Un- productive Wells .....	209,714.26*	195,840.75	828,970.68

## Office Expense:

Los Angeles Office .....	28,937.08	29,309.18	225,069.57
Delaware Office .....	947.09	2,346.77	7,006.61
New Jersey Office .....			13,560.76
Skelly Oil Co. Charges....	1,689.54	1,581.22	13,549.88
Rocky Mountain Area ....	7,542.89	9,525.76	54,110.92
Tide Water Assoc. Oil Co. Charges .....	9,629.79	6,698.19	92,558.33
General Taxes, Insurance, etc.	6,212.76	6,256.97	72,640.56
	<hr/>	<hr/>	<hr/>
	\$388,762.84	\$379,284.46	\$2,283,488.06
	<hr/>	<hr/>	<hr/>

## Operating Income Before

Reserves .....	\$204,226.00	\$223,077.74	\$1,819,936.45
	<hr/>	<hr/>	<hr/>

Reserve Provisions			
Depreciation .....	\$ 36,620.61	\$ 36,384.15	\$ 289,974.97
Depletion .....	29,045.54	29,008.57	227,942.62
Abandonments, etc. ....	30,000.00	30,000.00	240,000.00
Intangible Development Costs	12,000.00	62,560.06	102,000.00
Amortization of Organization & Merger Costs .....	2,929.37	2,929.37	23,434.96
	<u>\$110,595.52</u>	<u>\$160,882.15</u>	<u>\$ 883,352.55</u>
Profit or Loss from			
Operations .....	\$ 93,630.48	\$ 62,195.59	\$ 936,583.90
Other Income and Deductions			
Gain on Sale of Capital			
Assets .....	\$ 500.00-		\$ 88,027.57
Dividends Earned .....	144,463.50		914,746.50
Interest Earned .....	1,196.23	\$ 1,104.56	9,546.84
Interest Expense .....	698.75-	698.75-	4,912.45-
	<u>\$144,460.98</u>	<u>\$ 405.81</u>	<u>\$1,007,408.46</u>
Net Income Before Net Income of			
Subsidiary Company and Fed-			
eral Income Tax .....			
	<u>\$238,091.46</u>	<u>\$ 62,601.40</u>	<u>\$1,943,992.36</u>
Net Income of Subsidiary Com-			
pany Getty Realty Corporation			
	<u>\$ 24,726.72</u>	<u>\$ 10,780.12-</u>	<u>\$ 375,788.58</u>
Net Income Before Federal			
Income Taxes .....			
	<u>\$262,818.18</u>	<u>\$ 51,821.28</u>	<u>\$2,319,780.94</u>
Provision for Federal Income			
Taxes .....			
	<u>850.00</u>	<u>1,300.00-</u>	<u>48,850.00</u>
Net Income for the Period....			
	<u><u>\$261,968.18*</u></u>	<u><u>\$ 53,121.28</u></u>	<u><u>\$2,270,930.94</u></u>
Earnings Per Share .....			
	\$19	\$04	\$1.66

\* Includes \$175,000.00 provision for possible future dry hole well costs Gordon Creek, Mott #3, McKittrick #73-30 and Tide Water Leases.

## EXHIBIT III

Sunray Oil Corporation  
(Delaware)  
Tulsa, Oklahoma

## Balance Sheet

As at August 31, 1947

## Assets

## Current Assets

Cash on hand and demand deposits.....	\$ 8,364,460.55	
U. S. Government Bonds.....	2,062,000.00	
Accounts and Notes Receivable (less reserves) .....	3,590,588.18	
Inventories .....	1,844,245.81	\$15,861,294.54

Cash Surrender Value of Life Insurance.....		120,770.25
Contractual Accounts Receivable.....		43,313.51
Investments in Other Securities.....		663,001.00

## Property Accounts

Leaseholds, royalties, transmission and pipe line systems, refinery, develop- ment costs and other equipment.....	125,483,478.08	
Less: Reserves for depreciation and depletion .....	45,429,292.05	80,054,186.03

Prepaid Items .....		237,387.08
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Total Assets .....		<u>\$96,979,952.41</u>
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## Liabilities

## Current Liabilities

Accounts Payable .....	\$ 2,085,864.09	
Notes Payable .....	1,000,000.00	
Dividends Payable .....	292,174.35	
Accrued Pay Rolls, Interest, Insurance & Misc. Taxes .....	437,145.55	
Provision for Federal and State Income Taxes .....	1,721,339.73	
Commissions Payable .....	108,833.47	5,645,357.19





## EXHIBIT III-A

Sunray Oil Corporation  
(Delaware)  
Tulsa, Oklahoma

## Statement of Profit &amp; Loss

Eight Months Ended August 31, 1947

Gross Operating Income .....	\$23,586,745.80
Deduct: Costs (Including oil sold to refinery, operating and general expenses, taxes, etc.) .....	10,372,485.64
Net Operating Income .....	<u>\$13,214,260.16</u>
Add: Other Income (Interest, discounts, bonuses, etc.).....	76,280.23
Total .....	<u>\$13,290,540.39</u>
Deduct: Nonoperating Charges (Including interest and discounts) .....	591,540.13
Balance .....	<u>\$12,699,000.26</u>
Deduct: Capital Extinguishments, Leases Abandoned, Dry Holes, Etc. ....	976,474.94
Net Income: Before Current Year Reserves for Deprecia- tion, depletion and Taxes .....	<u>\$11,722,525.32</u>
Provision for Depreciation and Depletion.....	3,320,000.00
Net Income: Before provision for Income Taxes.....	\$ 8,402,525.32
Provision for Income Taxes .....	<u>1,400,000.00</u>
Net Profit .....	<u>\$ 7,002,525.32</u>

## EXHIBIT IV

Mission Corporation

Balance Sheet

September 30, 1947

## Assets

## Current Assets

## Cash

U. S. Govt. Securities.....	\$ 1,642,333.49
Accounts Receivable and Accruals.....	100,000.00
Inventories—Crude Oil .....	18,091.67
	422.24

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 \$ 1,760,847.40

## Investments in Other Companies

## Tide Water Associated Oil Co.

1,345,593 shares @ \$10.36..... \$13,938,216.29

## Skelly Oil Co.

582,657 shares @ \$7.2947..... 4,250,289.45

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 18,188,505.74

## Fixed Assets

## Leases, royalties, equipment and drilling costs .....

\$ 413,396.78

## Less: Reserves .....

295,957.59

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 117,439.19

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**Total Assets .....**


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**\$20,066,792.33**

Liabilities

Current Liabilities

Accrued Federal Income Tax.....	\$ 147,955.23
Accrued Taxes—Other .....	1,763.89
Accounts Payable .....	1,600.77

\$ 151,319.89

Capital Stock and Surplus

Capital Stock—Par Value \$10.00 Per Share	
Authorized—1,500,000 shares	
Issued—1,379,545 shares .....	\$13,795,450.00
Earned Surplus .....	6,184,314.94

\$19,979,764.94

Less: Shares in Treasury—at cost	
(5,400) .....	64,292.50

1,374,145 Shares Outstanding and Surplus .....	<u>19,915,472.44</u>
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Total Liabilities .....	<u>\$20,066,792.33</u>
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## EXHIBIT IV-A

Mission Corporation  
Statement of Income

Nine Months Ended September 30, 1947

## Oil Operations

Gross Operating Income After Royalties—			
Habiger Lease .....		\$	136,001.52
Operating Charges			
Production Expense \$	10,041.36		
Depreciation .....	3,792.00		
Depletion .....	8,060.00		21,893.36
			<hr/>
Net Income—			
Habiger Lease		\$	114,108.16
Depletion on Royalty			
Interests .....	\$ 7,320.00		
Less: Royalties			
Received .....	2,723.69		
			<hr/>
Net Loss—			
Royalties .....			4,596.31
Net Income—Oil			
Operations .....		\$	109,511.85
Other Income and Expense			
Dividends			
Tide Water			
Associated Oil Co...	\$1,009,194.75		
Skelly Oil Company..	728,321.25	\$1,737,516.00	
			<hr/>
Interest .....			2,313.75
Total Other Income....		\$1,739,829.75	
General and Admin-			
istrative Expense.....			64,249.90
			<hr/>
Net Other			
Income .....			1,675,579.85
			<hr/>

Net Income Before Federal	
Income Taxes .....	\$1,785,091.70
Less Provision for	
Federal Income Taxes	106,000.00
	<hr/>
Net Income for	
Period .....	\$1,679,091.70
	<hr/> <hr/>
Earned Surplus Reconciliation	
Balance, January 1.....	\$5,535,831.99
Add: Profit for nine months	
ended September 30.....	1,679,091.70
	<hr/>
	\$7,214,923.69
Less: Dividend Paid	
June 30 .....	1,030,608.75
	<hr/>
Balance, September 30	\$6,184,314.94
	<hr/> <hr/>





## EXHIBIT V

Pacific Western Oil Corporation  
Consolidated Comparative Balance Sheet  
September 30, 1947

Pacific Western Oil Corporation  
Consolidated Comparative Balance Sheet  
September 30, 1947

Assets				Liabilities			
	Sept. 30 1947	August 31 1947	Increase Decrease—		Sept. 30 1947	August 31 1947	Increase Decrease—
<b>Current Assets</b>				<b>Current Liabilities</b>			
Cash .....	\$ 2,833,833.84	\$ 2,767,057.55	\$ 66,776.29	Accounts Payable.....	\$ 755,047.04	\$ 816,987.66	\$ 61,940.62—
U. S. Government Securities .....	630,380.06	630,385.36	5.30—	Royalties Payable .....	167,083.94	175,911.64	8,827.70—
Notes Receivable .....	89,040.00	89,072.00	32.00—	Wages Payable .....	45,254.67	33,670.64	11,584.03—
Accounts Receivable .....	829,393.21	897,622.53	68,229.32—	Interest Payable .....	41,901.88	25,203.13	16,698.75
Dividends Receivable— Tide Water Assoc. Oil Co. ....		144,463.50	144,463.50—	Misc. Accrued Liabilities .....	32,016.10	32,387.44	371.34—
Inventories .....	663,592.70	653,824.48	9,768.22	Taxes Accrued—Other Than Income .....	199,175.42	147,299.74	51,875.68
				Provision for Federal and State Income Taxes.....	327,468.36	297,318.36	30,150.00
<b>Total Current Assets</b> \$	<b>5,046,239.81</b>	<b>5,182,425.42</b>	<b>\$136,185.61—</b>	<b>Total Current Liabilities</b> .....	<b>\$ 1,567,947.41</b>	<b>\$ 1,528,778.61</b>	<b>\$ 39,168.80</b>
<b>Investments in Common Stocks</b>				<b>Deferred Credits</b> .....			
Mission Corporation (46.71%) 641,808 Shares at \$15.50.....	\$ 9,947,084.88	\$ 9,947,084.88			\$ 3,349.45	\$ 652.54	\$ 2,696.91
Tide Water Assoc. Oil Co. 577,854 Shares at \$6.80 .....	3,927,006.95	3,927,006.95		<b>Capital Stock and Surplus</b>			
Other .....	112.00	112.00		Capital Stock—\$10 Par Value Common 2,000,000 Shares Authorized 1,376,430 Shares Issued at \$10.....	\$13,764,300.00	\$13,764,300.00	
<b>Total Investments (at Cost)</b> .....	<b>\$13,874,203.83</b>	<b>\$13,874,203.83</b>		<b>Surplus</b>			
<b>Fixed Assets</b>				Paid in Surplus.....			
Lands, Leases, Royalties.....	\$13,443,207.96	\$13,366,947.44	\$ 76,260.52		\$ 5,382,136.54	\$ 5,382,136.54	
Less: Reserves .....	7,439,163.61	7,395,283.47	43,880.14	Earned Surplus January 1, 1947, adjusted .....			
<b>Net</b> .....	<b>\$ 6,004,044.35</b>	<b>\$ 5,971,663.97</b>	<b>\$ 32,380.38</b>		\$ 9,857,636.60	\$ 9,857,636.60	
<b>Equipment and Drilling</b>				Profit Year to date.....			
Costs .....	\$23,685,403.37	\$23,514,247.66	\$171,155.71		2,378,020.36	2,270,930.94	\$107,689.42
Less Reserves .....	18,984,502.26	18,981,898.75	2,603.51		\$12,236,256.96	\$12,128,567.54	\$107,689.42
<b>Net</b> .....	<b>\$ 4,700,901.11</b>	<b>\$ 4,532,348.91</b>	<b>\$168,552.20</b>	<b>Total Surplus</b> .....	<b>\$17,618,393.50</b>	<b>\$17,510,704.08</b>	<b>\$107,689.42</b>
Sub-total .....	\$10,704,945.46	\$10,504,012.88	\$200,932.58	<b>Total Capital Stock and Surplus</b> .....			
<b>Hotel Properties (Includ- ing Land Cost of \$1,000,000)</b> .....					\$31,382,693.50	\$31,275,004.08	\$107,689.42
Less Reserves .....	661,072.67	647,392.73	13,679.94	Less 4700 Shares Common Stock in Treasury .....			
<b>Net</b> .....	<b>\$ 2,697,542.71</b>	<b>\$ 2,670,805.36</b>	<b>\$ 26,737.35</b>		100,840.65	100,840.65	
<b>Net Fixed Assets</b> .....	<b>\$13,402,488.17</b>	<b>\$13,174,818.24</b>	<b>\$227,669.93</b>	1,371,730 Common Shares Outstand- ing and Surplus.....			
					\$31,281,552.85	\$31,174,163.43	\$107,689.42
<b>Organization and Merger</b>				(Per Share \$22.80)			
Costs .....	\$ 314,500.78	\$ 314,500.78		<b>Total Assets</b> .....			
Less Reserves .....	200,255.22	197,325.85	\$ 2,929.37		\$32,853,149.71	\$32,703,594.58	\$149,555.13
<b>Net</b> .....	<b>\$ 114,245.56</b>	<b>\$ 117,174.93</b>	<b>\$ 2,929.37—</b>	<b>Total Liabilities</b> .....			
<b>Prepaid and Deferred Charges</b>					\$32,853,149.71	\$32,703,594.58	\$149,555.13
Rentals, Taxes, Insurance, etc. ....	\$ 415,972.34	\$ 354,972.16	\$ 61,000.18				



## EXHIBIT V-A

Pacific Western Oil Corporation  
 Consolidated Comparative Statement of Income  
 September 30, 1947

	Month of Sept., 1947	Month of August, 1947	Year 1947 To Date
Gross Operating Income			
Net Sales and Royalties.....	\$597,301.34	\$574,589.46	\$4,595,697.62
Other Operating Income.....	7,251.33	18,399.38	112,279.56
	<hr/>	<hr/>	<hr/>
Total Operating Income .....	\$604,552.67	\$592,988.84	\$4,707,977.18
	<hr/>	<hr/>	<hr/>
Operating Charges			
Operating Expense—Net.....	\$ 96,198.74	\$101,298.89	\$ 860,392.02
Undeveloped Lease			
Rent and Expense.....	28,388.20	22,790.54	240,215.67
Exploration Work and			
Unproductive Wells .....	216,087.70*	209,714.26	1,045,058.38
Office Expense:			
Los Angeles Office.....	28,588.87	28,937.08	253,658.44
Delaware Office .....	1,717.53	947.09	8,724.14
New Jersey Office.....			13,560.76
Skelly Oil Co.			
Charges .....	1,221.04	1,689.54	14,770.92
Rocky Mountain Area....	9,618.84	7,542.89	63,729.76
Tide Water Assoc. Oil			
Co. Charges.....	6,372.82	9,629.79	98,931.15
General Taxes,			
Insurance, etc. ....	35,209.84	6,212.76	107,850.40
	<hr/>	<hr/>	<hr/>
	\$423,403.58	\$388,762.84	\$2,706,891.64
	<hr/>	<hr/>	<hr/>
Operating Income Before Reserves .....	\$181,149.09	\$204,226.00	\$2,001,085.54
	<hr/>	<hr/>	<hr/>

## Reserve Provision

Depreciation .....	\$ 39,959.15	\$ 36,620.61	\$ 329,934.12
Depletion .....	31,285.04	29,045.54	259,227.66
Abandonments, etc. ....	30,000.00	30,000.00	270,000.00
Intangible Development			
Costs .....	18,000.00-	12,000.00	84,000.00
Amortization of Organiza- tion and Merger Costs....	2,929.37	2,929.37	26,364.33
	<u>\$ 86,173.56</u>	<u>\$110,595.52</u>	<u>\$ 969,526.11</u>

Profit or Loss From  
Operations

Operations .....	\$ 94,975.53	\$ 93,630.48	\$1,031,559.43
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## Other Income and Deductions

## Gain on Sale of Capital

Assets .....		\$ 500.00-	\$ 88,027.57
Dividends Earned .....		144,463.50	914,746.50
Interest Earned .....	\$ 1,083.71	1,196.23	10,630.55
Interest Expense .....	16,698.75-	698.75-	21,611.20-
	<u>\$ 15,615.04-</u>	<u>\$144,460.98</u>	<u>\$ 991,793.42</u>

Net Income Before Net Income  
of Subsidiary Company and  
Federal Income Tax.....

Federal Income Tax.....	\$ 79,360.49	\$238,091.46	\$2,023,352.85
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Net Income of Subsidiary Com-  
pany Getty Realty Corpora-  
tion .....

Getty Realty Corpora- tion .....	\$ 29,478.93	\$ 24,726.72	\$ 405,267.51
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Net Income Before Federal  
Income Taxes .....

Federal Income Taxes .....	\$108,839.42	\$262,818.18	\$2,428,620.36
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## Provision for Federal Income

Taxes .....	1,150.00	850.00	50,000.00
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Net Income for the  
Period .....

Period .....	\$107,689.42*	\$261,968.18	\$2,378,620.36
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## Earnings Per Share.....

Earnings Per Share.....	\$ .08	\$ .19	\$1.73
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\*Includes \$265,000.00 provision for possible future dry-hole well costs Gordon Creek, Mott No. 3, McKittrick No. 73-30, Greer, Rankin and Tide Water leases.



## EXHIBIT VI

## Statement Showing Stock Market Quotations

	Mission		Skelly		Tide Water		Pacific Western		Sunray	
	High	Low	High	Low	High	Low	High	Low	High	Low
January 1946 .....	34 $\frac{3}{4}$	30 $\frac{3}{4}$	61 $\frac{1}{2}$	54	22 $\frac{3}{4}$	20 $\frac{1}{8}$	31 $\frac{1}{2}$	27 $\frac{1}{2}$	9 $\frac{1}{4}$	8 $\frac{1}{4}$
February 1946 .....	32 $\frac{1}{2}$	29 $\frac{1}{2}$	60	55 $\frac{1}{4}$	21 $\frac{1}{2}$	18 $\frac{5}{8}$	37 $\frac{3}{4}$	24 $\frac{1}{2}$	9 $\frac{1}{8}$	7 $\frac{5}{8}$
March 1946 .....	37 $\frac{1}{4}$	29 $\frac{1}{8}$	72 $\frac{1}{2}$	57	21 $\frac{3}{4}$	19 $\frac{3}{8}$	31 $\frac{3}{8}$	23 $\frac{3}{4}$	9 $\frac{1}{8}$	7 $\frac{7}{8}$
April 1946 .....	43 $\frac{1}{4}$	36 $\frac{5}{8}$	77 $\frac{1}{2}$	71	24 $\frac{1}{4}$	21 $\frac{3}{4}$	34 $\frac{3}{8}$	29 $\frac{1}{2}$	11	8 $\frac{7}{8}$
May 1946 .....	44	40 $\frac{1}{4}$	84 $\frac{1}{2}$	76 $\frac{3}{4}$	23 $\frac{1}{2}$	22	33	31	14	10 $\frac{5}{8}$
June 1946 .....	44	40 $\frac{1}{4}$	85 $\frac{1}{2}$	78 $\frac{1}{2}$	23 $\frac{3}{4}$	22 $\frac{7}{8}$	32	29 $\frac{1}{2}$	13 $\frac{3}{8}$	11 $\frac{1}{4}$
July 1946 .....	43	37	80 $\frac{1}{2}$	69	23 $\frac{7}{8}$	21 $\frac{1}{2}$	29 $\frac{1}{2}$	26	12 $\frac{3}{4}$	10 $\frac{1}{2}$
August 1946 .....	40 $\frac{1}{2}$	33 $\frac{1}{2}$	78 $\frac{1}{2}$	67 $\frac{7}{8}$	24 $\frac{1}{8}$	20 $\frac{3}{4}$	28 $\frac{3}{4}$	25	11 $\frac{3}{8}$	9 $\frac{1}{4}$
September 1946 .....	34	28	67 $\frac{1}{4}$	58 $\frac{1}{2}$	21 $\frac{3}{4}$	18 $\frac{1}{8}$	24	20 $\frac{1}{8}$	10	8 $\frac{1}{8}$
October 1946 .....	33	28	65	56	19 $\frac{3}{4}$	17 $\frac{3}{4}$	23 $\frac{1}{2}$	19	9 $\frac{1}{8}$	7 $\frac{3}{8}$
November 1946 .....	32	28	65 $\frac{3}{4}$	61 $\frac{1}{4}$	19 $\frac{7}{8}$	17 $\frac{1}{2}$	21 $\frac{7}{8}$	18 $\frac{1}{4}$	9 $\frac{1}{4}$	7 $\frac{1}{2}$
December 1946 .....	35 $\frac{3}{4}$	29 $\frac{1}{2}$	74 $\frac{1}{2}$	66 $\frac{1}{4}$	20 $\frac{1}{4}$	18	22 $\frac{1}{2}$	19 $\frac{3}{4}$	8 $\frac{7}{8}$	7 $\frac{5}{8}$
January 1947 .....	34 $\frac{1}{2}$	30 $\frac{3}{4}$	72 $\frac{1}{2}$	67 $\frac{1}{2}$	20 $\frac{1}{4}$	18 $\frac{1}{4}$	23	21 $\frac{3}{4}$	8 $\frac{5}{8}$	7 $\frac{7}{8}$
February 1947 .....	33 $\frac{3}{4}$	32	70	68 $\frac{1}{4}$	19 $\frac{3}{4}$	18 $\frac{5}{8}$	28 $\frac{5}{8}$	22 $\frac{3}{4}$	9 $\frac{3}{4}$	8 $\frac{3}{8}$
March 1947 .....	34 $\frac{1}{4}$	28 $\frac{3}{4}$	71 $\frac{3}{4}$	65	19 $\frac{7}{8}$	18 $\frac{1}{4}$	28 $\frac{1}{2}$	25	10 $\frac{1}{2}$	9
April 1947 .....	36 $\frac{1}{2}$	30 $\frac{1}{2}$	72	67	20 $\frac{1}{4}$	18 $\frac{1}{8}$	37 $\frac{5}{8}$	27 $\frac{1}{2}$	10 $\frac{1}{8}$	8 $\frac{1}{2}$
May 1947 .....	35 $\frac{3}{4}$	32	73 $\frac{1}{2}$	65 $\frac{1}{4}$	20 $\frac{5}{8}$	18	33 $\frac{3}{4}$	30 $\frac{1}{2}$	10 $\frac{3}{8}$	8 $\frac{1}{2}$
June 1947 .....	37 $\frac{1}{4}$	33 $\frac{3}{4}$	73	68 $\frac{1}{4}$	20 $\frac{1}{8}$	18 $\frac{3}{4}$	36 $\frac{1}{2}$	31 $\frac{3}{4}$	10 $\frac{3}{8}$	8 $\frac{7}{8}$
July 1947 .....	43 $\frac{1}{4}$	36 $\frac{1}{2}$	86	71	22	20 $\frac{1}{8}$	41 $\frac{1}{4}$	34	12 $\frac{1}{8}$	10 $\frac{1}{8}$
August 1947 .....	41 $\frac{1}{2}$	37 $\frac{5}{8}$	84	78 $\frac{1}{4}$	21 $\frac{1}{8}$	20	40 $\frac{1}{2}$	35 $\frac{1}{2}$	12	11 $\frac{1}{8}$
September 1947 .....	44 $\frac{3}{4}$	38 $\frac{1}{4}$	88 $\frac{1}{4}$	80	20 $\frac{7}{8}$	19 $\frac{7}{8}$	48 $\frac{3}{4}$	36 $\frac{7}{8}$	12 $\frac{3}{8}$	11
Averages .....	37.88	32.84	74.48	66.76	21.52	19.40	31.38	26.64	10.63	8.96
Average Middle Point	35.36		70.62		20.46		29.01		9.80	

## Computation Showing Average Discount at Which Mission Stock Was Selling

Mission Shares Outstanding 1,374,145. No. Skelly Shares Owned by Mission 582,657. No. Tide Water Shares Owned by Mission 1,345,593. One Share of Mission equals .9792 Share of Tide Water plus .4240 Share of Skelly.

$$\text{Tide Water } .9792 \times \$20.46 = \$20.03$$

$$\text{Skelly } .4240 \times \$70.62 = \$29.94$$

$$\text{Mission } \underline{\$49.97} \\ \underline{\$35.36}$$

$$\underline{\$14.61} \text{ or } 29 + \% \text{ of } \$49.97$$





## EXHIBIT VII

Statement of Continuity of Equity Interest Owned by  
Mission Stockholders

A	Shares of Mission Outstanding.....	1,374,145	100.000%
B	Owned by Pacific Western.....	641,808	46.706%
		<hr/>	<hr/>
C (A-B)	Owned by Continuing Mission Holders	732,337	53.294%
		<hr/>	<hr/>
D	732,337 Shares of Mission to be exchanged on 6 to 1 basis for Sunray stock would result in Continuing Mission Holders receiving in lieu of Mission stock 4,394,022 Shares of Sunray.		
E	Present Sunray Shares Outstanding....	4,923,646	52.84204%
F	New Sunray Shares to be Issued to Continuing Mission Holders.....	4,394,022	47.15796%
		<hr/>	<hr/>
G	Resultant Outstanding Shares of Sunray .....	9,317,668	100.00000%
		<hr/>	<hr/>
H	From the above it can be seen that the present shareholders in Mission (other than Pacific Western) own indirectly 53.294% of the net assets of Mission Corporation and following the merger will own indirectly 47.15796% of the net assets of Sunray.		

EXHIBIT VIII

Statement of Possible Dividends Which Mission Stockholders  
Might Expect in Event There Is No Merger

A—Calculation That Present Status Continues

B—Calculation That Skelly Might Pay \$5.00 Dividend

	Calculation A	Calculation B
From Exhibit IV-A—Net income from oil operations for 9 months shows \$109,511.85, or at the rate of \$12,167.98 per month x 12 .....	\$ 146,015.76	\$ 146,015.76
From same Exhibit General and Administrative expense for 9 months shows \$64,249.90, or at the rate of \$7,138.88 per month x 12 .....	85,666.56	85,666.56
	<hr/>	<hr/>
Net Operating Income .....	\$ 60,349.20	\$ 60,349.20
Dividends from 1,345,593 shares Tide Water @ \$1.20 .....	1,614,711.60	1,614,711.60
Dividends from 582,657 shares Skelly @ \$2.50 .....	1,456,642.50	
Dividends from 582,657 shares Skelly @ \$5.00 .....		2,913,285.00
	<hr/>	<hr/>
Net Income Before Federal Income Taxes .....	\$3,131,703.30	\$4,588,345.80
Less Accrued Federal Income Taxes 6% .....	187,902.20	275,300.75
	<hr/>	<hr/>
Available Net Income.....	\$2,943,801.10	\$4,313,045.05
	<hr/> <hr/>	<hr/> <hr/>
1,374,145 Shares Outstanding		
Available Net Income Per Share.....	\$2.14	\$3.14
Reasonable Dividend Expectancy 1 Share....	\$2.00	\$3.00



## EXHIBIT IX

Statement of Possible Dividends Which Might Be Received From Six Shares of Sunray in the Event of the Merger and Sunray Continuing to Hold Tide Water Stock

A—Calculation That Present Status Continues

B—Calculation That Skelly Might Pay \$5.00 Dividend

	Calculation A	Calculation B
Mission Net Operating Income (Exhibit VIII) .....	\$ 60,349.20	\$ 60,349.20
From Exhibit V-A, Pacific Western net income from operations for 9 months shows \$1,031,559.43, or at the rate of \$114,617.71 per month x 12 .....	1,375,412.52	1,375,412.52
Net income of Getty Realty (Exhibit V-A) for 9 months shows \$405,267.51, or at the rate of \$45,029.72 per month x 12.....	540,356.64	540,356.64
Net profit of Sunray (Exhibit III-A) for 8 months shows \$7,002,525.32, or rate of \$875,315.66 per month x 12.....	10,503,787.92	10,503,787.92
Dividends from 1,345,593 shares Tide Water @ \$1.20 .....	1,614,711.60	1,614,711.60
Dividends from 577,854 shares Tide Water @ \$1.20 .....	693,424.80	693,424.80
Dividends from 582,657 shares Skelly @ \$2.50 .....	1,456,642.50	
Dividends from 582,657 shares Skelly @ \$5.00 .....		2,913,285.00
Net Income Before Additional Interest	\$16,244,685.18	\$17,701,327.68

(No Additional Federal Income Tax Deduction Deemed Necessary Due to Dividends Received Credits)

Assume that in order to accomplish the merger, it will be necessary for Sunray to incur an additional indebtedness of \$100,000,000 to provide for the payment to Pacific Western stockholders and for other merger costs and expenses—and that the interest rate of 4½% is applicable to the entire amount:

4½% Interest on \$100,000,000.....	4,500,000.00	4,500,000.00
	<hr/>	<hr/>
Available Net Income .....	\$11,744,685.18	\$13,201,327.68
	<hr/> <hr/>	<hr/> <hr/>
9,317,668 Shares to be Outstanding (Exhibit VII)		
Available Net Income Per Share.....	\$1.26	\$1.42
or for Six Shares .....	\$7.56	\$8.52
Reasonable Dividend Expectancy		
50% of Net Earnings .....	\$3.78	\$4.26

## EXHIBIT X

Statement of Possible Dividends Which Might Be Received From Six Shares of Sunray in Event of the Merger and All Tide Water Stock Sold by Sunray

A—Calculations that Present Status Continues

B—Calculations That Skelly Might Pay \$5.00 Dividend

	Calculation A	Calculation B
Refer to Exhibit IX Showing Net Income before Additional Interest .....	\$16,244,685.18	\$17,701,327.68
On assumption that Tide Water stock is to be sold, reduce above figure by the dividend income from Tide Water, included therein .....	2,308,136.40	2,308,136.40
	<hr/>	<hr/>
Net Income Before Additional Interest	\$13,936,548.78	\$15,392,191.28
<p>Assume, as in Exhibit IX, that \$100,000,000 additional funds required by Sunray, and that all Tide Water stock sold for \$25 per share, or \$48,086,175 cash, of which possibly \$6,786,175 might be required for taxes arising from the sale, leaving \$41,300,000 net to apply on the debt, reducing it to \$58,700,000</p>		
4½% Interest on \$58,700,000.....	2,641,500.00	2,641,500.00
	<hr/>	<hr/>
Available Net Income .....	\$11,295,048.78	\$12,750,691.28
	<hr/> <hr/>	<hr/> <hr/>
9,317,668 Shares to be Outstanding (Exhibit VII)		
Available Net Income Per Share.....	\$1.21	\$1.37
or for Six Shares.....	\$7.26	\$8.22
Reasonable Dividend Expectancy		
50% of Net Earnings.....	\$3.63	\$4.11

## EXHIBIT XI

Statement Showing Evaluations of Continuing Mission Holders 53.294%  
in Mission's Net Assets—Using Various Evaluations for Skelly Stock

## A—Using Skelly Stock at Market 10/18/47

Current Net Assets .....	\$	1,609,527	
Other Assets Net—Property, etc.....		500,000	
1,345,593 T.W.A. @ \$25.....		33,639,825	
			<hr/>
	\$	35,749,352	
Dividend Declared by Skelly.....		728,321	
			<hr/>
Dividend Declared by Mission.....	\$1,030,608		
Additional Tax Liability.....	43,700		
			<hr/>
		1,074,308	
			<hr/>
Approximate Value of Mission Net Assets other than Skelly Stock—This figure to be used in all following computations .....	\$	35,403,365	
582,657 Shares Skelly @ \$91.....		53,021,787	
			<hr/>
Computed Net Value 1,374,145 Mission.....	\$	88,425,152	
			<hr/> <hr/>
53.29401% Thereof Applicable to Continu- ing Mission Holders of 732,337 Shares....			\$47,125,309
Value Per Share.....			\$64.35
Market Value 10/18/47 .....			\$54.00
Selling at Discount of.....			16%

## B—Using Skelly Stock at \$125 Per Share

Evaluation Shown in A, above.....	\$	35,403,365	
582,657 Shares Skelly @ \$125.....		72,832,125	
			<hr/>
Computed Net Value 1,374,145 Mission.....	\$	108,235,490	
			<hr/> <hr/>
53.29401% Thereof .....			\$57,683,033
Value Per Share.....			\$78.77
Selling at Discount of.....			31%

## C—Using Skelly Stock at \$150 Per Share

Evaluation Shown in A, above.....	\$ 35,403,365	
582,657 Shares Skelly @ \$150.....	87,398,550	
	<hr/>	
Computed Net Value 1,374,145 Mission.....	\$122,801,915	
	<hr/> <hr/>	
53.29401% Thereof .....		\$65,446,065
Value Per Share .....		\$89.37
Selling at Discount of.....		40%

## D—Using Skelly Stock at \$175 Per Share

Evaluation Shown in A, above.....	\$ 35,403,365	
582,657 Shares Skelly @ \$175.....	101,964,975	
	<hr/>	
Computed Net Value 1,374,145 Mission.....	\$137,368,340	
	<hr/> <hr/>	
53.29401% Thereof .....		\$73,209,097
Value Per Share .....		\$99.97
Selling at Discount of.....		46%

## EXHIBIT XII

Statement Showing Computations of Evaluations of Sunray Following the Merger—Assuming (A) Present Sunray Common to Be Worth Market Price of \$11.50 Per Share (10/18/47), and (B) Tide Water to Be Worth \$25 Per Share and Not Sold, and (C) Using Various Evaluations for Skelly Stock

## A—Using Skelly Stock at Market 10/18/47

4,923,646 Sunray @ \$11.50.....	\$ 56,621,929	
1,923,447 T.W.A. @ \$25.....	48,086,175	
Hotel Pierre .....	6,000,000	
Mission Net Current Assets and Properties.....	1,763,540	
Pacific—Net Current Assets and All Properties—Developed and Undeveloped .....	33,000,000	
	<hr/>	
	\$145,471,644	
Less: New Debt Added .....	93,300,000	
	<hr/>	
Net New Value Added in Addition to Skelly Stock—This figure to be used in additional computations to follow .....	\$ 52,171,644	
582,657 Shares Skelly @ \$91.....	53,021,787	
	<hr/>	
Computed Net Value 9,317,668 Sunray Common	\$105,193,431	
	<hr/> <hr/>	
47.15796% Thereof .....		\$49,607,076
Value Per Share .....		\$11.29
Value of 6 Shares.....		\$67.74

## B—Using Skelly Stock at \$125 Per Share

Evaluation Shown in A, above.....	\$ 52,171,644	
582,657 Shares Skelly @ \$125.....	72,832,125	
	<hr/>	
Computed Net Value 9,317,668 Sunray Common	\$125,003,769	
	<hr/> <hr/>	
47.15796% Thereof .....		\$58,949,227
Value Per Share .....		\$13.42
Value of 6 Shares.....		\$80.52



*Mission Corporation vs.*

## C—Using Skelly Stock at \$150 Per Share

Evaluation Shown in A, above.....	\$ 52,171,644
582,657 Shares Skelly @ \$150.....	87,398,550
	<hr/>
Computed Net Value 9,317,668 Sunray Common	\$139,570,194
	<hr/> <hr/>

47.15796% Thereof .....	\$65,818,456
Value Per Share .....	\$14.98
Value of 6 Shares.....	\$89.88

## D—Using Skelly Stock at \$175 Per Share

Evaluation Shown in A, above.....	\$ 52,171,644
582,657 Shares Skelly @ \$175.....	101,964,975
	<hr/>
Computed Net Value 9,317,668 Sunray Common	\$154,136,619
	<hr/> <hr/>

47.15796% Thereof .....	\$72,687,685
Value Per Share.....	\$16.54
Value of 6 Shares.....	\$99.24

EXHIBIT XIII

Statement Showing Changes in Converting Mission Stockholders' Indirect Equity Ownership in Skelly and Tide Water Stocks

A. Using \$25 for T.W.A. and \$91 for Skelly

Before Merger (1,374,145 - 641,808 = 732,337 = 53.294%)	
1,345,593 T.W.A. @ \$25 = \$33,639,825 × 53.294%	= \$17,928,008
582,657 SYE @ \$91 = \$53,021,787 × 53.294%	= 28,257,961
	<u>\$46,185,969</u>

After Merger (9,317,668 - 4,923,646 = 4,394,022 = 47.15796%)	
1,923,447 T.W.A. @ \$25 = \$48,086,175 × 47.15796%	= \$22,676,459
582,657 SYE @ \$91 = \$53,021,787 × 47.15796%	= 25,003,993
	<u>\$47,680,452</u>

Differences

After Merger Values.....	\$47,680,452
Before Merger Values .....	46,185,969
	<u>Gain .....</u>
	<u>\$ 1,494,483</u>

B. Using \$25 for T.W.A. and \$125 for Skelly

Before Merger (53.294% as A, above)	
1,345,593 T.W.A. @ \$25 (as A, above).....	\$17,928,008
582,657 SYE @ \$125 = \$72,832,125 × 53.294% =	38,815,881
	<u>\$56,743,889</u>

After Merger (47.15796% as A, above)	
1,923,447 T.W.A. @ \$25 (as A, above).....	\$22,676,459
582,657 SYE @ \$125 = \$72,832,125 × 47.15796% =	34,346,144
	<u>\$57,022,603</u>

Differences

After Merger Values .....	\$57,022,603
Before Merger Values .....	56,743,889
	<u>Gain .....</u>
	<u>\$ 278,714</u>

C. Using \$25 for T.W.A. and \$150 for Skelly	
Before Merger (53.294% as A, above)	
1,345,593 T.W.A. @ \$25 (as A, above).....	\$17,928,008
582,657 SYE @ \$150 = \$87,398,550 × 53.294% =	46,579,057
	<hr/>
	\$64,507,065
	<hr/> <hr/>
After Merger (47.15796% as A, above)	
1,923,447 T.W.A. @ \$25 (as A, above).....	\$22,676,459
582,657 SYE @ \$150 = \$87,398,550 × 47.15796% =	41,215,373
	<hr/>
	\$63,891,832
	<hr/> <hr/>
Differences	
Before Merger Values .....	\$64,507,065
After Merger Values .....	63,891,832
	<hr/>
Loss .....	\$ 615,233
	<hr/> <hr/>

C. Alternate—Using \$30 for T.W.A. and \$150 for Skelly  
(In Computations C Skelly stock is valued at more than 50% over its market. It would be equitable to increase values for Tide Water to at least \$30, for equity comparisons in these computations.)

Before Merger (53.294% as A, above)	
1,345,593 T.W.A. @ \$30 = \$40,367,790 × 53.294% =	\$21,513,610
582,657 SYE @ \$150 = \$87,398,550 × 53.294% =	46,579,057
	<hr/>
	\$68,092,667
	<hr/> <hr/>
After Merger (47.15796% as A, above)	
1,923,447 T.W.A. @ \$30 = \$57,703,410 × 47.15796% =	\$27,211,751
582,657 SYE @ \$150 = \$87,398,550 × 47.15796% =	41,215,373
	<hr/>
	\$68,427,124
	<hr/> <hr/>
Differences	
After Merger Values .....	\$68,427,124
Before Merger Values .....	68,092,667
	<hr/>
Gain .....	\$ 334,457
	<hr/> <hr/>

D. Using \$25 for T.W.A. and \$175 for Skelly

Before Merger (53.294% as A, above)	
1,345,593 T.W.A. @ \$25 (as A, above).....	\$17,928,008
582,657 SYE @ \$175 = \$101,964,975 × 53.294% =	54,342,231
	<hr/>
	\$72,270,239
	<hr/> <hr/>
After Merger (47.15796% as A, above)	
1,923,447 T.W.A. @ \$25 (as A, above).....	\$22,676,459
582,657 SYE @ \$175 = \$101,964,975 × 47.15796% =	48,084,600
	<hr/>
	\$70,761,059
	<hr/> <hr/>

Differences

Before Merger Values .....	\$72,270,239
After Merger Values .....	70,761,059
	<hr/>
Loss .....	\$ 1,509,180
	<hr/> <hr/>

D. Alternate—Using \$35 for T.W.A. and \$175 for Skelly  
 (In Computations D Skelly stock is valued at \$84 per share more than its market value at 10/18/47, or 92% more. It should be equitable to increase values for Tide Water to at least \$35 for equity comparisons in these computations. This is far less than the 92% increase of Skelly stock values over market.)

Before Merger (53.294% as A, above)

1,345,593 T.W.A. @ \$35 = \$47,095,755 × 53.294% =	\$25,099,211
582,657 SYE @ \$175 = \$101,964,975 × 53.294% =	54,342,231
	<hr/>
	\$79,441,442
	<hr/> <hr/>
After Merger (47.15796% as A, above)	
1,923,447 T.W.A. @ \$35 = \$67,320,645 × 47.15796% =	\$31,748,147
582,657 SYE @ \$175 = \$101,964,975 × 47.15796% =	48,084,600
	<hr/>
	\$79,832,747
	<hr/> <hr/>

Differences

After Merger Values .....	\$79,832,747
Before Merger Values .....	79,441,442
	<hr/>
Gain .....	\$ 391,305
	<hr/> <hr/>

## E. Indirect Equity Ownership Changes

It would appear from the above computations that the Mission stockholders now owning 53.294% of the Mission stock have a certain indirect equity ownership in a certain number of shares of Skelly and Tide Water stock.

Following the proposed merger those same stockholders would have 47.15796% of the Sunray stock and would have a similar indirect equity ownership in the same number of shares of Skelly stock plus a similar indirect equity ownership in 1,923,447 shares of Tide Water stock.

When reduced to numbers of shares of Skelly and Tide Water involved in such indirect ownership, the following computations are significant:

Before Merger (the 732,337 shares of Mission, or 53.294%)

1,345,593 shares Tide Water  $\times$  53.294% = 717,120 shares

582,657 shares Skelly  $\times$  53.294% = 310,521 shares

717,120 shares by 732,337 shares is .97922 shares T.W.A. per share  
MSS

310,521 shares by 732,337 shares is .42401 shares SYE per share MSS

After Merger (the 4,394,022 shares of Sunray, or 47.15796%)

1,923,447 shares Tide Water  $\times$  47.15796% = 907,058 shares

582,657 shares Skelly  $\times$  47.15796% = 274,769 shares

907,058 shares by 732,337 shares is 1.23858 shares T.W.A. by present  
holder of 1 share MSS

274,769 shares by 732,337 shares is .37519 shares SYE by present  
holder of 1 share MSS

## Differences

The Mission stockholders give up indirect equity ownership in  
35752 shares of Skelly (310,521 less 274,769).

One share of Mission gives up indirect equity ownership in  
.04882 share of Skelly (.42401 less .37519).

The Mission stockholders gain indirect equity ownership in  
189,938 shares of Tide Water (907,058 less 717,120).

One share Mission gains indirect equity ownership in .25936  
share of Tide Water (1.23858 less .97922).

The following computations show various calculations of gains or losses in dollar values, due to changes in indirect ownership in Skelly and Tide Water stocks:

			Loss	Gain	Net Gain or Loss
35,752 shares SYE	@ \$ 91		\$3,253,432		
189,938 shares T.W.A.	@ \$ 25			\$ 4,748,450	
					\$1,495,018
35,752 shares SYE	@ \$125		4,469,000		
189,938 shares T.W.A.	@ \$ 25			4,748,450	
					279,450
35,752 shares SYE	@ \$150		5,362,800		
189,938 shares T.W.A.	@ \$ 25			4,748,450	
					614,350-
35,752 shares SYE	@ \$175		6,256,000		
189,938 shares T.W.A.	@ \$ 25			4,748,450	
					1,508,150-
Alternates					
35,752 shares SYE	@ \$150		5,362,800		
189,938 shares T.W.A.	@ \$ 30			5,698,140	
					335,340
35,752 shares SYE	@ \$175		6,256,600		
189,938 shares T.W.A.	@ \$ 35			6,647,830	
					391,230
			\$30,961,232	\$31,339,770	\$ 378,538
Average of above 6 computations			\$ 5,160,250	\$ 5,223,295	\$ 63,090

To reduce the above computed averages for the entire 732,337 shares of Mission to a per share average effect, the amount would be \$.086 per share.



Analyzing all of the above computations with reference to continuing values, which computations are, if anything, conservative against Mission equity interests due to using arbitrary values of \$125, \$150 and \$175 for Skelly stock in 5 of the computations, and using a decreased arbitrary value of \$30 and \$35 for Tide Water stock in only 2 of the computations, the resulting conclusion is that Mission shareholders continuing indirect ownership would increase about eight and six-tenths cents per share as a result of the merger. [431]

Upon the conclusion that Mission stockholders' indirect equity ownership in values represented by Tide Water and Skelly stock would therefore not be affected as a result of the merger, the next necessary fact to ascertain is that the indirect assumption by such Mission stockholders of 47.15796% of the newly created debt of \$93,300,000 (or \$43,998,377) is more than offset by the acquisition of indirect equity ownership of other assets held prior to the merger by Pacific Western, Mission and Sunray.

#### EXHIBIT XIV

Statement Showing Acquisitions of Equity Interests by Continuing Mission Stockholders of Net Assets Other Than Tide Water and Skelly Stocks (Those Computations Having Been Shown in Exhibit VIII)

Three calculations are herein made as follows:

- A—Showing Book Figures Only
- B—Using Market Value of Sunray and Evaluation Statements for Mission and Pacific Western
- C—Using Evaluation Statement

	Calculation A	Calculation B	Calculation C
<b>Mission</b>			
Current Assets			
(Exhibit IV) .....	\$1,760,847		
Less Current			
Liabilities .....	151,320	\$ 1,609,527	\$ 1,609,527
			\$ 1,609,527
Fixed Assets			
Per Exhibit IV .....	117,439		
Per Exhibit XVII .....		500,000	500,000
Net Mission .....	\$ 1,726,966	\$ 2,109,527	\$ 2,109,527
<b>Pacific Western</b>			
Assets—Other			
(Exhibit V) .....	\$5,576,569		
Less Liabilities .....	1,571,297	\$ 4,005,272	\$ 4,005,272
			\$ 4,005,272
Fixed Assets			
Per Exhibit V .....	13,402,488		
Per Exhibit XVIII .....		36,000,000	36,000,000
Net Pacific Western	\$17,407,760	\$40,005,272	\$40,005,272
<b>Sunray</b>			
Net Value			
(Exhibit III) ..\$	4,689,186		
	30,676,088	\$35,365,274	
Market Value \$11.50 ×			
4,923,646 Shares .....		\$56,621,929	
Evaluation (Exhibit XV) ....			\$104,625,043
Net Sunray .....	\$35,365,274	\$56,621,929	\$104,625,043
Total Combined .....	\$54,500,000	\$98,736,728	\$146,739,842
Less Assumed New Debt	100,000,000	100,000,000	100,000,000
Net .....	\$45,500,000	\$ 1,263,272	\$46,739,842

Obviously in Calculations A book figures mean nothing with reference to actual values. Calculations B show net value of Sunray at \$56,621,929, which is also understated by using market value of its stock, which undoubtedly is lower than actual value, but such computation, however, has been used with Calculations C to arrive at an average of the two in order to ascertain that the net asset values being acquired offset the debt being assumed.

Net Calculations B .....	\$ 1,263,272-
Net Calculations C .....	46,739,842
	<hr/>
Total B and C .....	\$45,476,570
Average of B and C (Net gain for 9,317,668 shares) .....	\$22,738,285
	<hr/> <hr/>
Net gain applicable to Continuing Mission Shareholders' 47.15796% of Sunray.....	\$10,722,911
Amount applicable, per share, to present 732,337 shares Mission .....	\$1.46

### EXHIBIT XV

#### Evaluation of Sunray Common Stock at 8/31/47

Current Assets—Per Books.....	\$ 16,762,373
Oil and Gas Reserves (Exhibit EV-SUY-II).....	122,190,154
Non-Producing Properties—Per Books .....	5,773,893
Refinerics Evaluation (Exhibit EV-SUY-I) .....	20,000,000
Drilling Tools, Autos, Trucks and General Equip- ment—Per Books .....	1,698,539
Work in Progress—Per Books .....	2,692,138
	<hr/>
	\$166,117,097
Less:	
Current Liabilities—Per Books ....\$ 5,645,357	
Long Term Debt—Per Books .....	29,119,667
Provision for Federal Tax— Per Books .....	537,670
Preferred Stock—Per Books .....	26,189,360
	<hr/>
	61,492,054
	<hr/>
Net Evaluation 4,923,646	
Shares of Common .....	\$104,625,043
or \$21.25 Per Share	<hr/> <hr/>

EXHIBIT XV-A

Sunray Oil and Gas Reserves Evaluation

I obtained and analyzed a detailed report of all of the productive properties of Sunray. This report was prepared by Harold J. Wasson as of 3/31/46. With this information at hand I discussed with a representative of De Golyer and MacNaughton the reserves shown therein, and the probability of their being substantially correct and supportable, and as to any probable substantial change in the amounts involved between the dates of 3/31/46 and 8/1/47, other than depletion due to production.

The total Developed Proved Reserves estimated to be recoverable from wells already drilled was .....	123,262,519 bbls.
The total Proved but Undrilled Reserves was estimated at .....	72,881,172 bbls.
	<hr/>
	196,143,691 bbls.
The total estimated Reserves of Gas was	594,295,000 m.c.f.

I ascertain from statements of Sunray that the monthly net production was slightly in excess of 1,000,000 barrels. I reviewed a current estimate of net oil reserves which indicated a tentative net of 185,000,000 barrels. In order to arrive at which I considered to be a conservative basis for estimating for my purposes the reserves of Sunray, I took an arbitrary 20% discount of the computed reserves of 3/31/46, with the results as follows:

Proved and Drilled Reserves .....	123,262,519 bbls.
Less 20% .....	24,652,504 bbls.
	<hr/>
Present Proved and Drilled Reserves.....	98,610,015 bbls.
	<hr/> <hr/>

Proved but Not Drilled Reserves.....	72,881,172 bbls.
Less 20% .....	14,576,234 bbls.
	<hr/>
Present Proved but Not Drilled Reserves	58,304,938 bbls.
	<hr/> <hr/>

The sum of such present reserves so computed was 156,914,953 barrels, which was 28,085,047 barrels less than the current appraisal of 185,000,000 above referred to, and 20,585,047 barrels less than the final adjusted current appraisal of 177,500,000 barrels.

In order to evaluate such computed reserves I used several yardsticks of value as follows:

A.	98,610,015 bbls. drilled reserves @ \$.75	total \$ 73,957,511
	58,304,938 bbls. proved undrilled @ \$.50	total 29,152,469
	594,295,000 m.c.f. gas @ \$.02	total 11,885,900
		<hr/>
		\$114,995,880
		<hr/> <hr/>
B.	156,914,953 bbls. reserves @ \$.70	\$109,840,467
	594,295,000 m.c.f. gas @ \$.02	11,885,900
		<hr/>
		\$121,726,367
		<hr/> <hr/>
C.	34,000 bbls. daily production @ \$2500	\$ 85,000,000
	58,304,938 bbls. undrilled @ \$ .50	29,152,469
	594,295,000 m.c.f. gas @ \$ .02	11,885,900
		<hr/>
		\$126,038,369
		<hr/> <hr/>
D.	Annual Computed Profit from Oil and Gas Production, exclusive of Depreciation and Depletion—i.e., cash income .....	\$ 18,000,000
	Multiplied by 7 years .....	\$126,000,000
		<hr/> <hr/>



Following these computations I computed an average evaluation as follows:

A. ....	\$114,995,880
B. ....	121,726,367
C. ....	126,038,369
D. ....	126,000,000
	<hr/>
	\$488,760,616
	<hr/> <hr/>

Divided by 4 for average \$122,190,154, which was my evaluation of Sunray's Oil Reserves.

## EXHIBIT XV-C

### Sunray Refinery Evaluation

An analysis of the reports of the refinery operations for the years 1942, 1943, 1944 and 1945 was made. The net profits realized through refinery operations, although substantial, were not indicative to me as a basis upon which to evaluate the refineries at the present time, as price restrictions upon products were in effect during such years.

I reviewed and analyzed the detailed refinery operating statements for the month of August, 1947, and for the eight months to August 31, 1947. Under improved market prices being obtained for products, these statements seemed to be a more reasonable basis upon which to evaluate the refineries.

The August, 1947, statement for the Allen Refinery showed a total of 404,690 barrels of crude processed and a net profit of \$318,673 therefrom, or a rate of 78c per barrel. The Santa Maria refinery showed a profit of \$11,063 for the month of August, 1947. These figures were after all charges for depreciation, etc. The production of



crude oil by Sunray was far in excess of its refinery requirements and I concluded that a continuing source of crude supply for the refineries was not a problem.

On a conservative basis, I determined that the refinery operations of Sunray, exclusive of any consideration for additional refinery profits, arising from the future operations of the newly acquired refinery at Beckett, should result in profits of \$275,000 per month, or \$3,300,000 per year.

This profit I evaluated at \$20,000,000 (approximately 6 years), and used such evaluation in my analysis of the evaluation of Sunray. [437]

### EXHIBIT XVI-A

#### Evaluation of Skelly Common Stock at 6/30/47

Current Assets .....	\$ 31,108,650	
Oil-Gas Reserves		
(Exhibit EV-SYE-II) .....	178,805,000	
Refineries, Skelgas and Gasoline		
Plants (Exhibit EV-SYE-I) .....	32,463,000	
Undeveloped Oil and Gas Properties	10,275,633	
Bulk and Service Stations, Lube		
Plant, Pipe Line Systems, Invest-		
ments and Long-Term Receivables,		
Other Fixed Assets Per Book Fig-		
ures (Exhibit EV-SYE-I) .....	10,380,864	
		\$263,033,147
Less:		
Current Liabilities .....	\$ 13,905,833	
Funded Debt .....	16,000,000	
Reserves .....	1,992,832	
		31,898,665
Net evaluation of 981,348.6 Shares.....		\$231,134,482
or \$235.53 Per Share		

## EXHIBIT XVI-B

Skelly Oil Company  
Oil and Gas Reserves Evaluation

From information obtained from various sources, including an appraisal of some time ago by DeGolyer and MacNaughton as to reserves, I determined to use the following reserve figures in evaluating Skelly reserves:

Proved and Drilled Reserves.....	150,000,000 bbls.
Proved but Not Drilled .....	60,000,000 bbls.
	-----
Total .....	210,000,000 bbls.
	-----
Gas Reserves .....	1,600,000,000 m.c.f.
	-----

Evaluated by several yardsticks as follows:

A.	150,000,000 bbls. drilled Reserves	@ \$ .75	\$112,500,000
	60,000,000 bbls. proved undrilled	@ \$ .50	30,000,000
	1,600,000,000 m.c.f. Gas	@ \$ .02	32,000,000
			-----
			\$174,500,000
			-----
B.	210,000,000 bbls. Reserves	@ \$ .70	\$147,000,000
	1,600,000,000 m.c.f. Gas	@ \$ .02	32,000,000
			-----
			\$179,000,000
			-----
C.	50,000 bbls daily	@ \$2500	\$125,000,000
	60,000,000 bbls. undrilled	@ \$ .50	30,000,000
	1,600,000,000 m.c.f. Gas	@ \$ .02	32,000,000
			-----
			\$187,000,000
			-----

D. Annual Computed Profit from Oil and Gas Production, exclusive of Depreciation and Depletion—i.e., cash income

6 Months to 6/30/47 .....	\$ 9,496,767	
Add Depletion & Depreciation .....	2,983,360	
		<hr/>
One-half Year .....	\$12,480,127	
One Year .....	\$24,960,254	
Multiplied by 7 Years.....		\$174,722,000
		<hr/> <hr/>

Following these computations I computed an average evaluation :

A. ....	\$174,500,000
B. ....	179,000,000
C. ....	187,000,000
D. ....	174,722,000
	<hr/>
	\$715,222,000
	<hr/> <hr/>

Divided by 4 for average \$178,805,000, which was my evaluation of Skelly Reserves.

## EXHIBIT XVI-C

Skelly Oil Company 6/30/47

Evaluations

## Refineries and Gasoline Plants

## Natural Gasoline Plants All

Profits 6 Months to 6/30/47.... \$ 716,790

Annual Rate ..... \$1,433,500

Times 6 years ..... \$ 8,601,000

## Skelgas Division

Profits 6 Months to 6/30/47.... \$ 718,111

Annual Rate ..... \$1,436,222

Times 6 years ..... 8,617,000

## Refineries and Perry Petroleum

Profits 6 Months to 6/30/47.... \$1,177,837

92,607

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\$1,270,444

Annual Rate .....\$2,540,888

Times 6 years..... 15,245,000

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\$32,463,000

## Other Assets

## At Depreciated Book Values

Lube Plant ..... \$ 186,103

Bulk and Service Stations ..... 4,684,110

Crude and Pipe Line Systems..... 2,283,418

Undeveloped Oil and Gas Properties..... 10,275,633

(1,915,916 Acres)

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\$17,429,264

Investments and Long-Term Receivables 656,992

Other Fixed Assets ..... 2,570,241

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\$20,656,497

## Current Net Assets, etc.

Current Net Assets ..... \$31,108,650

Current Liabilities .....\$13,905,833

Funded Debt ..... 16,000,000

Reserves ..... 1,992,832 31,898,665

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\$ 790,015-

## EXHIBIT XVII

Evaluation of Mission 10/18/47  
Based Upon Evaluation of Skelly

Current Assets 9/30/47 Balance Sheet.....	\$	1,760,847
Dividend to be received from Skelly.....		728,321
Other Assets—Lease, Royalties and Property.....		500,000
		<hr/>
Subtotal .....	\$	2,989,168
Less:		
Current Liabilities 9/30/47 .....	\$	151,320
Additional Tax to Accrue .....		43,700
Dividend Declared .....	1,030,608	1,225,628
		<hr/>
Net Assets Other Than Stocks.....	\$	1,763,540
1,345,593 Shares Tide Water @ \$25.....		33,639,825
582,657 Shares Skelly @ \$235.53.....		137,233,203
		<hr/>
Computed Evaluation of 1,374,145 Shares.....	\$172,636,568	
or \$125.63 Per Share		<hr/>

## EXHIBIT XVIII

Pacific Western Evaluation  
Based Upon Mission Evaluation

Current Assets .....	\$5,182,425
Additional Mission Dividend .....	481,000
	<hr/>
	\$5,663,425
Less Current Liabilities .....	1,528,779
	<hr/>
Net Current Assets .....	\$ 4,134,646
Hotel Pierre .....	6,000,000
577,854 Shares Tide Water @ \$25.....	14,446,350
641,808 Shares Mission @ \$125.63.....	80,630,339
All Oil Reserves, Developed and Undeveloped, Fee Properties, Autos, Trucks, Tank Farms, All Other Equipment, and Undeveloped Lands and Leases .....	30,000,000
	<hr/>
Computed Evaluation of 1,371,730 Shares.....	\$135,211,335
or \$98.57 Per Share	<hr/>
Pacific Western Stockholders to receive for such Shares \$68.00 or 68.00/98.57s of Computed Valuation, or 68.9865% thereof.	

In the District Court of the United States of  
America, in and for the District of Nevada

Civil No. 669

WILLIAM G. SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,

Defendant.

ORDER AND FINDINGS ON APPLICATION  
FOR PRELIMINARY INJUNCTION

After the filing of the Complaint and on the same day, November 4, 1947, the Court made its order fixing November 21, 1947, as the time for hearing plaintiff's application for temporary injunction. On November 18, 1947, plaintiff filed an Amended Complaint; defendant's Answer to said Amended Complaint was filed November 20, 1947. By stipulation defendant's Motion to Dismiss the action is to be considered as directed to the Amended Complaint. Before the hearing of the application for temporary injunction, several petitions to intervene in the action were filed. John H. Blaffer, claiming to be the owner of 1500 shares of defendant Mission Corporation, asked to intervene against the defendant. Several petitions to intervene in support of defendant's contentions were also filed. The motions to intervene having been filed on or near the day set for the hearing of the application for temporary injunction, [693] the Court has determined to postpone consideration of said motions.



On November 21, 1947, the application for temporary injunction came on regularly to be heard and was submitted upon the pleadings, depositions and affidavits offered in behalf of plaintiff and defendant. Arguments were presented on behalf of the parties and also by attorneys representing those seeking to intervene.

The Motion to Dismiss is denied.

From the pleadings, affidavits and depositions considered upon the hearing of the application for temporary injunction, the Court makes the following findings of fact:

#### FINDINGS OF FACT

1. That plaintiff William G. Skelly is a citizen and resident of the State of Oklahoma; that defendant Mission Corporation is a corporation organized and existing under and by virtue of the laws of the State of Nevada; that the matter in controversy herein exceeds exclusive of interest and costs the sum or value of \$3,000.00. That plaintiff is the beneficial owner and holder of 14,000 shares of the common capital stock of defendant of which 2,000 are of record in his name on the books of the corporation and 12,000 shares are beneficially owned by him.

2. That Thomas A. J. Dockweiler and George Franklin Getty II are trustees under that certain declaration of trust dated December 31, 1934, wherein Sarah C. Getty is named as trustor and J. Paul Getty as original trustee; J. Paul Getty

is testamentary trustee under the decree of partial distribution of the estate of Sarah C. Getty, deceased. Said trustees and J. Paul Getty, individually, are hereinafter referred to as the "Getty Interests." [694]

3. That the Getty Interests are and at the times alleged in the Amended Complaint have been the owners of 1,169,449 shares of the common capital stock of Pacific Western Oil Corporation, a Delaware Corporation (hereinafter called "Pacific"), out of a total issued and outstanding of 1,371,730; that in the annual meetings of the defendant, Pacific voted its stock for the election of the directors of the defendant; that the Getty Interests have and exercise actual control of Pacific.

4. That Pacific is the owner and holder of record of 641,808 shares of common capital stock of the defendant Mission Corporation (hereinafter called "Mission"), out of a total issued and outstanding of 1,374,145; that the remaining shares of stock of Mission are owned by approximately 29,300 different stockholders, said stockholders being hereinafter referred to as "Remaining Stockholders."

5. That the Getty Interests, some time prior to October 4, 1947, decided to obtain cash for their stock in Pacific; that Getty Interests entered into a written agreement under date of October 4, 1947, a copy of which is "Exhibit A" annexed to the Amended Complaint; that on October 4, 1947, the market price of Pacific common stock on the New York Stock Exchange was \$52.00 per share and that its book value on September 30, 1947, was

\$22.80 per share; that by the terms of said agreement "Exhibit A" Sunray Oil Corporation (hereinafter called "Sunray"), is to pay Getty Interests immediately prior to the merger described in "Exhibit A" becoming effective, \$68.00 per share for Getty Interests' Pacific, or a total of \$79,522,532.00; that the book value on said date was approximately \$26,663,437.20 and its market value was \$60,811,348.00; that "Exhibit A" provides that said sale is [695] to be made and the purchase money paid immediately prior to the said merger.

6. That the agreement to merge Pacific and Mission into Sunray, "Exhibit B" attached to the Amended Complaint, was prepared by Sunray and Eastman, Dillon & Company, and the Getty Interests; that said agreement of merger, "Exhibit B," is conditioned on Sunray becoming the owner of the shares of capital stock of Pacific now owned by Getty Interests, prior to or simultaneously with the effective date of the merger.

7. That on October 18, 1947, at a special meeting, defendant's Board of Directors by a purported majority (Directors Skelly and Hyden voting "No"), approved said merger agreement, "Exhibit B," and ordered the calling of a special meeting of defendant's stockholders to be held on the 6th day of December, 1947, at 10:00 o'clock a.m. at the principal office of defendant, 153 N. Virginia Street, Reno, Nevada, to consider and vote upon the adoption of said merger agreement, "Exhibit B"; that it is the intention of said Getty Interests at said stockholders' meeting of December 6, 1947, through their control of Pacific, the dominant stockholder of

Mission, to cause said merger agreement to be approved and adopted; that said Pacific is the dominant stockholder of Mission and is in control of said defendant.

8. That defendant owns 1,345,593 shares of the capital stock of Tide Water Associated Oil Company; that on the effective date of the agreement of merger said stock is to be sold by Sunray to Tide Water Associated Oil Company at the price of \$25.00 per share, or a total price of \$33,639,825.00; that said Tide Water Associated Oil Company stock owned by defendant corporation was at the date of this action of the [696] market value of the sum of \$31,453,236.17; that said sale will also include 577,854 shares of Tide Water stock owned by Pacific; that the proceeds of said sale are to be applied on payment for Pacific to be purchased as aforesaid.

9. That at the meeting of the Board of Directors of the defendant on October 18, 1947, and prior to a consideration by said Board of the proposed merger agreement, plaintiff was removed as president of defendant and David T. Staples was elected in his stead; that it was suggested to Director Hyden that he resign as a director of defendant because he had indicated that he would not vote for the proposed merger; this suggestion was made by one of the directors who voted in favor of the proposed merger; that Mr. Hyden did not resign as suggested; that prior to the meeting of October 18, 1947, B. I. Graves resigned as a director of defendant and at said meeting David T. Staples was elected to succeed him.



10. That the action of defendant's Board of Directors on October 18, 1947, was effected and done by the vote of defendant's directors, David T. Staples, Fero Williams, Emil Kluth and Arthur M. Boal; that said Staples is president of defendant and the president and director of Pacific; that Fero Williams is a director and assistant secretary and assistant treasurer of Pacific; that Emil Kluth is vice-president of Pacific; that all of the above named directors of Pacific were elected directors of Pacific by the Getty Interests; that at the stockholders' meeting for election of directors of Mission held May 8, 1947, the stock of Mission owned by Pacific was voted for the following named directors who were elected: Arthur M. Boal, Thomas A. J. Dockweiler, B. I. Graves, Arch H. Hyden, Emil Kluth, W. G. Skelly and Fero Williams.

That under date of December 21, 1946, Pacific offered to certain of its employees options to purchase between January 15 and February 1, 1948, an aggregate of 4,477 shares of its capital stock held in its treasury at the price of \$20.00 per share, provided, that each employee who might desire to take advantage of the offer should authorize 24 semi-monthly payroll deductions sufficient to pay for his stock to be applied to payment therefor if such stockholder should elect to exercise such option. Pursuant to such offer, D. T. Staples, Emil Kluth and Fero Williams indicated to Pacific that they might desire to purchase 150 shares, 100 shares and 93 shares, respectively, of said capital stock,

and each of them authorized the required payroll deductions in connection therewith; and that Staples, Kluth and Williams, if the merger becomes effective, are to be permitted to pay up the said purchase price, \$20.00 per share, and the shares so purchased will be paid for in cash if they elect to take cash for them at the same rate at which the shares of the Getty Interests will be paid for, \$68.00 per share.

That David T. Staples, president and director of both Pacific and Mission, Emil Kluth, the vice-president of Pacific and a director of Mission, Fero Williams, treasurer and a director of Pacific and a director of Mission, are expected to be associated with Sunray as employees at substantially their present salaries; Mr. Staples' present aggregate salary from Pacific is \$27,500.00; the salary of none of the others is in excess of \$15,000.00.

That Thomas A. J. Dockweiler, director of Mission and also one of the trustees under a declaration of trust wherein Sarah C. Getty was trustor dated December 31, 1934, before he signed the agreement of October 4, 1947, had a conference with Mr. Clarence Wright, president of Sunray, in which he insisted that [698] if the trustees and Mr. J. Paul Getty were to enter into any agreement to sell to Sunray, the heads of their departments and their top men in Pacific would have to be taken care of and taken over by the new company without detriment to them; that Mr. Wright so agreed.

11. That prior to October 18, 1947, there had not been presented to defendant's Board of Directors



any matters pertaining to the merger of the corporations, parties to "Exhibit B," nor had any negotiations concerning such proposed merger been conducted with said W. G. Skelly, defendant's then president; that at the meeting of October 18, 1947, there was presented to defendant's Board said "Exhibit B"; that the Board of Directors acting by and through the directors representing the Getty Interests did not have and refused to procure an appraisal value of the assets of the corporations proposed to be merged; that said merger agreement was submitted to the attorney for defendant on October 17, 1947, and that his opinion was submitted orally at the meeting of directors October 18, 1947, to the effect that said proposed merger was in all respects legal; that the attorney submitting said opinion was Arthur M. Boal, a director of defendant elected by the Getty Interests; that the said directors refused to delay the consideration of the merger agreement for 48 hours to give counsel for the defendant further time to study and consider said merger agreement; that at said meeting of October 18, 1947, the two resolutions, "Exhibit C" and "D" attached to the Amended Complaint, were proposed by W. G. Skelly, seconded by Director Arch Hyden and rejected by a majority of the Board of Directors, said directors constituting said majority having been elected directors of defendant by the Getty Interest through their ownership of Pacific, the dominant stockholder of Mission.

12. That under the proposed merger agreement the plan of [699] converting the shares of the constituent corporations among other things provides that the Pacific stockholders other than the Getty Interests have the alternative of taking \$68.00 in cash or  $7/10$  of one share of 1947 prior preferred stock of Sunray for each share of Pacific; that under said plan of conversion each share of stock of Mission which shall be outstanding on the effective date of the agreement of merger (except shares held in the treasury of Mission or owned by any other constituent corporation) shall be converted into 6 shares of the common stock of Sunray; that if the Mission stockholders other than Pacific accept the common stock of Sunray, their interest in Sunray will be subject to debts and senior securities and other obligations in large sums, some of which are the following: Current liabilities, \$21,000,000.00; debentures or notes, \$56,825,000.00 excluding approximately \$4,000,000.00 included in current liabilities; prior preferred stock, \$26,189,300.00; second preferred stock, \$25,000,000.00; other liabilities not including common stock, \$2,785,967.46 excluding \$129,866.80 including current liabilities.

13. That if the Remaining Stockholders of Mission elect to convert their new Sunray stock into cash they would take the risk of fluctuations in the market price and of receiving considerably less than the apparent value of the shares of the surviving corporation at current market prices; that the Getty Interests have secured themselves against any such risks of losses and costs by arranging in

advance to receive an amount certain on a particular date without any expense of liquidation or risk of diminution of the value fixed by them for their investment.

On the basis of the foregoing, the Court makes the following conclusions of law:

### CONCLUSIONS OF LAW

1. That the ratios of exchange for Pacific stock and the [700] stock of the Remaining Stockholders of Mission provided for in the proposed merger agreement, said "Exhibit B" attached to the Amended Complaint, are unequal and were arrived at without an appraisal of the constituent companies by an independent appraiser.

2. That Fero Williams, Emil Kluth and David T. Staples, directors of Mission Corporation October 18, 1947, each had a financial interest in the merger agreement, "Exhibit B" attached to the Amended Complaint, at the times they acted upon the same.

3. That by reason of said interest of said named directors, the directors' meeting of Mission Corporation on October 18, 1947, and the resolution adopted at such meeting approving said agreement of merger were nullities; and the action of said directors in entering into and signing said agreement of merger on October 18, 1947, is not an approval and signing of said agreement by a legal majority of a Board of Directors of the defendant Mission Corporation.

4. That the above named three directors were influenced and controlled by Director Thomas A. J. Dockweiler and that the principal interest and purpose of said Dockweiler on October 18, 1947, and at all times throughout the negotiation for said proposed merger was to bring about the sale of stock of Pacific Western Oil Corporation owned by the Getty Interests for \$68.00 per share.

### ORDER

It appearing to the Court that the issuance of a preliminary injunction is necessary to prevent immediate and irreparable damage for the reasons set forth in the above Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed That a preliminary [701] injunction be, and it hereby is, granted plaintiff William G. Skelly against the said defendant Mission Corporation, a corporation, its officers, directors, agents, servants, employees, and attorneys and upon those persons in active concert or participation with it or them, restraining it and them from proceeding further with the said proposed merger considered by its Board of Directors on October 18, 1947, and

It Is Further Ordered, Adjudged and Decreed that said defendant Mission Corporation, a corporation, its officers, directors, agents, servants, employees, and attorneys and those persons in active concert or participation with it or them be, and they hereby are, enjoined and restrained from hold-

ing on December 6, 1947, or at any other time, a stockholders' meeting to consider and vote upon the said agreement of merger considered and acted upon by the defendant's Board of Directors on October 18, 1947, or from proceeding further with said proposed merger.

It Is Further Ordered that plaintiff forthwith give a penal bond in the sum of \$5,000.00 conditioned for the payment of such costs and damages as may be incurred or suffered by any party who shall be found to have been wrongfully enjoined or restrained and that said preliminary injunction remain in full force and effect until final hearing in this court or until further order of this Court.

Dated: This 2nd day of December, 1947.

ROGER T. FOLEY,

United States District Judge.

[Endorsed]: Filed Dec. 3, 1947. [702]

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[Title of District Court and Cause.]

#### BOND FOR TEMPORARY INJUNCTION

Whereas, by an Order of the above entitled Court, made on the 3rd day of December, 1947, plaintiff was required to file an undertaking in the sum of Five Thousand Dollars (\$5,000) in this action, wherein was granted a temporary injunction restraining and enjoining the above named defend-



ant from the commission of certain acts as the same are more particularly set forth and described in the order and opinion of the Court.

Now, Therefore, we, William G. Skelly, as principal, and Hartford Accident and Indemnity Company, a corporation duly qualified to do business in the State of Nevada, as surety, in consideration of the premises and of the issuing of said temporary injunction, do jointly undertake in the sum of Five Thousand Dollars (\$5000) that said plaintiff, William G. Skelly will pay to the party enjoined such damages not exceeding the sum of Five Thousand Dollars (\$5,000) as may be incurred or suffered [705] by any party who shall be found to have been wrongfully enjoined or restrained if the Court finally decides that the plaintiff was not entitled thereto.

In Witness Whereof, the principal and surety hereto have executed these presents this 3rd day of December, 1947.

/s/ WILLIAM G. SKELLY,  
Principal.

HARTFORD ACCIDENT AND  
INDEMNITY COMPANY,  
Surety.

By J. E. SLINGERLAND,  
Its Attorney-in-Fact.

Approved:

/s/ ROGER T. FOLEY,  
United States District Judge.



State of Nevada,  
County of Washoe—ss.

On this 3rd day of December, 1947, personally appeared before me, a notary public in and for the county aforesaid, William G. Skelly, known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

[Seal]                      CATHERINE TWEEDT,  
Notary Public.

My Commission expires September 24, 1951.

State of Nevada,  
County of Washoe—ss.

On this 3rd day of December, 1947, personally appeared before me, a Notary Public in and for the county aforesaid, J. E. Slingerland, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of Hartford Accident and Indemnity Company and acknowledged that he subscribed the name of said Hartford Accident and Indemnity Company thereto as Surety, and his own name as attorney-in-fact freely and voluntarily for the uses and purposes

therein mentioned; that said J. E. Slingerland is known to me to be the attorney-in-fact duly authorized to execute the same on behalf of said Hartford Accident and Indemnity Company, a corporation, and said J. E. Slingerland upon oath did depose that he is the attorney-in-fact for said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the county aforesaid, the day and year in this certificate first above written.

[Seal]

CATHERINE TWEEDT,

Notary Public.

My Commission expires September 24, 1951.

[Endorsed]: Filed Dec. 4, 1947. [707]

[Title of District Court and Cause.]

### MOTION FOR SUPERSEDEAS

Defendant moves the Court to stay the enforcement of the judgment and order entered and filed in the above entitled action on the 3rd day of December, 1947, granting a preliminary injunction to the plaintiff, pending the disposition of defendant's appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and for that purpose to fix the amount of the bond required to be filed by defendant.

L. D. SUMMERFIELD,  
First National Bank Building  
(Branch) Reno, Nevada.

HAWKINS, RHODES &  
HAWKINS,  
Stack Building, Reno, Nevada

By ROBERT ZIEMER HAWKINS,  
BRYCE RHODES,  
Attorneys for Defendant.

Notice of the foregoing Motion is hereby waived and it is stipulated that the same may be considered and acted upon by the Court forthwith.

December 4, 1947.

JOHN P. THATCHER,  
Of Counsel for Plaintiff.

[Endorsed]: Filed Dec. 4, 1947. [708]

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR  
SUPERSEDEAS

Defendant's Motion for Supersedeas having come on regularly to be heard before this Court on the 4th day of December, 1947, at 4:30 o'clock p.m., and the Court being fully advised, It Is Ordered that said Motion for Supersedeas be, and the same hereby is denied.

Dated this 4th day of December, 1947.

ROGER T. FOLEY,  
United States District Judge.

[Endorsed]: Filed Dec. 4, 1947. [709]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS

Notice Is Hereby Given that Mission Corporation, a corporation, defendant above named, appeals to the Circuit Court of Appeals for the Ninth Circuit from the judgment and order entered in this action on the 3rd day of December, 1947, granting a preliminary injunction to the plaintiff above named against the above named defendant.

Dated this 4th day of December, 1947.

9-11

L. D. SUMMERFIELD,  
First National Bank Building  
(Branch), Reno, Nevada.

HAWKINS, RHODES &  
HAWKINS,  
Stack Building, Reno, Nevada.

By ROBERT ZIEMER HAWKINS,  
BRYCE RHODES,  
Attorneys for Defendant.

[Endorsed]: Filed Dec. 4, 1947. [710]

[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men by These Presents, That we, Mission Corporation, as principal, and American Surety Company of New York, as sureties, are held and firmly bound unto William G. Skelly, plaintiff in the above-entitled action, in the full and just sum of Two Hundred and Fifty (\$250) Dollars, to be paid to the said William G. Skelly, his successors, executors, administrators and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 4th day of December, 1947.

Whereas, on the 3rd day of December, 1947, in an action depending in the United States District Court, in and for the District of Nevada, between William G. Skelly, as plaintiff, and Mission Corporation, a corporation, as defendant, [711] a Judgment and Order were rendered against the said Mission Corporation and the said Mission Corporation having filed a Notice of Appeal from such Judgment and Order to the United States Circuit Court of Appeals, for the Ninth Circuit;

Now, the condition of this obligation is such, that if the said Mission Corporation shall prosecute its appeal to effect and shall pay costs if the appeal is dismissed or the judgment affirmed, or such costs as the said Circuit Court of Appeals may award



against the said Mission Corporation if the Judgment is modified or in any other event, then this obligation to be void; otherwise, to remain in full force and effect.

MISSION CORPORATION,  
a Corporation.

[Seal] By /s/ ROBERT Z. HAWKINS,  
Secretary-Treasurer,  
Principal.

AMERICAN SURETY  
COMPANY OF NEW YORK,

[Seal] By /s/ HOWARD PARISH,  
Attorney in Fact,  
Surety.

The above bond is approved.

ROGER T. FOLEY. [712]

State of Nevada,  
County of Washoe—ss.

On this, the 4th day of December, 1947, personally appeared before me, a Notary Public in and for the County of Washoe, Robert Z. Hawkins, known to me to be the Secretary-Treasurer of the corporation that executed the foregoing instrument, and upon oath did depose that he is an officer of the said corporation as above designated; that he is acquainted with the Seal of said corporation and that the Seal affixed to said instrument is the Corporate Seal of said corporation; that the signature to said instrument was made by an officer of said

corporation as indicated after said signature; that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

Subscribed and sworn to before me, this 4th day of December, 1947.

[Seal]      /s/ RUTH T. QUIVEY,  
Notary Public.

My Commission expires March 15, 1948.

State of Nevada,  
County of Washoe—ss.

On this 4th day of December, 1947, personally appeared before me, a Notary Public in and for the County of Washoe, Howard Parish, known to me to be the person whose name is subscribed to the within instrument as the Attorney in Fact of the American Surety Company of New York, and acknowledged to me that he subscribed the name of the said American Surety Company of New York thereto as principal and his own name as Attorney in Fact, freely and voluntarily and for the uses and purposes therein mentioned.

Subscribed and sworn to before me, this 4th day of December, 1947.

[Seal]      /s/ LUCILE HANES,  
Notary Public.

My Commission expires Sept. 27, 1950.

[Endorsed]: Filed Dec. 4, 1947. [713]

[Title of District Court and Cause.]

## DESIGNATION OF RECORD ON APPEAL

Appellant, Mission Corporation, acting through its attorneys, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action: [714]

1. Complaint (All Exhibits to Complaint are omitted as they are identical with Exhibits A to D inclusive attached to Amended Complaint, hereinafter designated as Document No. 13).

2. Summons (and Return of Service).

3. Order Fixing Time for Hearing Application for Temporary Injunction.

4. Motion for Leave to Serve Written Interrogatories Upon Adverse Party and Affidavit of Garrett Logan Attached.

5. Order Granting Leave to Serve Written Interrogatories Upon Adverse Party.

6. Interrogatories.

7. Affidavit of Service (of Interrogatories).

8. Motion for Leave to Take Depositions and Affidavit of Garrett Logan Attached.

9. Order Granting Leave to Take Depositions.

10. Affidavit (by John P. Thatcher that Resident Agent of Mission Corporation is temporarily absent from the State of Nevada).

11. Affidavit of Service (of the aforesaid document numbers 3, 4, 5, 6, 8, 9 and 10 by mailing to Mission Corporation).

12. Motion to Dismiss.

13. Amended Complaint (and All Exhibits).

14. Answer to Amended Complaint.
15. Subpoena Duces Tecum (directed to Robert Ziemer Hawkins, dated November 14, 1947).
16. Subpoena Duces Tecum (directed to Robert Ziemer Hawkins, dated November 18, 1947).
17. Subpoena Duces Tecum (directed to William G. Skelly, dated November 20, 1947).
18. Answers to Plaintiff's Interrogatories (includes both questions and answers).
19. Affidavit of Service (by Harold C. Stuart dated November 24, 1947). [715]
20. Affidavit, including exhibits thereto attached, filed on behalf of the plaintiff, William G. Skelly, as follows:
  - (a) Affidavit of Leo A. Achtschin.
  - (b) Affidavit of Chesley C. Herndon.
  - (c) Affidavit of Arch H. Hyden.
  - (d) Affidavit of William G. Skelly.
  - (e) Affidavit of Harold C. Stuart.
21. Affidavits, including exhibits thereto attached, filed on behalf of the defendant, Mission Corporation, as follows:
  - (a) Thomas A. J. Dockweiler.
  - (b) George A. Hammer.
  - (c) Emil Kluth.
  - (d) Raymond F. Kravis.
  - (e) J. Kroupa.
  - (f) Charles F. Krug.
  - (g) Caleb S. Layton.
  - (h) Charles H. Schimpff.
  - (i) David T. Staples.
  - (j) Harold J. Wasson.
  - (k) Clarence H. Wright.

22. Stipulation (dated November 26, 1947, permitting substitution of lithographic copy for original of letter and minutes).

23. Exhibits submitted in evidence by the plaintiff as follows:

- I. Plaintiff's Exhibit "1" (marked copy of Mission proxy statement).
- II. Plaintiff's Exhibit "2" (letter and draft of Minutes of Directors' Meeting).
- III. Plaintiff's Exhibit "3" (Depositions of Messrs. Dockweiler and Getty and Notice to Take Oral Depositions and Affidavit of Service of said Notice attached to said Depositions). [716]

24. Exhibit submitted in evidence by the defendant as follows:

- I. Defendant's Exhibit "A" (Sunray proxy statement).

25. Order and Findings on Application for Preliminary Injunction dated December 2, 1947.

26. Affidavit of Service (of the aforesaid Order upon Mission Corporation).

27. Affidavit of Service (of the aforesaid Order upon Robert Z. Hawkins, Lester D. Summerfield and Arthur M. Boal, counsel for Mission Corp.

28. Bond for Temporary Injunction.

29. Motion for Supersedeas.

30. Order denying Motion for Supersedeas.

31. Notice of Appeal to Circuit Court of Appeals.

32. Bond for costs on Appeal.



33. Points upon which appellant intends to rely on this appeal are as follows:

- (a) The court erred in not dismissing the action for failure of the appellee's complaint to state a claim within the jurisdictional amount of the court.
- (b) The court erred in not dismissing the action for failure of the appellee's complaint to state a claim upon which relief can be granted.
- (c) The court erred in ruling that the directors' meeting of Mission Corporation held on October 18, 1947, and the resolution adopted at such meeting approving the agreement of merger, were nullities.
- (d) The court erred in granting a preliminary injunction restraining the appellant Mission Corporation from holding on December 6, 1947, or at [717] any other time, a stockholders' meeting to consider and vote upon the said agreement of merger considered and acted upon by the appellant's Board of Directors on October 18, 1947, and further restraining the said appellant from proceeding further with said proposed merger.
- (e) The court erred in holding that Directors Kluth, Williams and Staples were disqualified, by reason of financial interest, from approving and signing the agreement of merger considered by the Board of Directors at its meeting on October 18, 1947.



- (f) The court erred in holding that Directors Kluth, Williams and Staples were influenced and controlled by Director Thomas A. J. Dockweiler.
- (g) The court erred in holding that the principal interest and purpose of Director Thomas A. J. Dockweiler on October 18, 1947, or at any time throughout the negotiation of said proposed merger, was to bring about the sale of stock of Pacific Western Oil Corporation owned by the Getty interests for \$68.00 per share.
- (h) The court erred in holding that the ratios of exchange for Pacific stock and the stock of the Remaining Stockholders of Mission provided for in the proposed merger agreement, were unequal or were arrived at without an appraisal of the constituent companies by an independent appraiser.

34. This "Designation of Record on Appeal."

The foregoing Designation of Record on Appeal is submitted [718] by counsel for the appellant.

HAWKINS, RHODES &  
HAWKINS,

By /s/ ROBERT Z. HAWKINS,  
/s/ LESTER D. SUMMERFIELD.

TOMPKINS, BOAL &  
TOMPKINS,

By /s/ ARTHUR M. BOAL,  
Attorneys for Appellant and Defendant, Mission  
Corporation.

Service of the foregoing Designation of Record on Appeal, by copy, is hereby acknowledged at Dec. 8th, 1947, at 5:15 p.m.

By /s/ HAROLD C. STUART,  
Of Counsel for said Appellee and Plaintiff,  
Attorneys for Appellee and  
Plaintiff, William G. Skelly.

It is hereby stipulated by and between counsel for the above-named appellant and defendant, Mission Corporation, and William G. Skelly, appellee and plaintiff, that the Clerk of the United States District Court, in and for the District of Nevada, may send the above record by a special messenger, Frank Mallory, to the Clerk of the Circuit Court of Appeals.

/s/ ROBERT Z. HAWKINS,  
Of Counsel for Defendant.

[Endorsed]: Filed Dec. 8, 1947. [719]

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[Title of District Court and Cause.]

MINUTES OF COURT DECEMBER 8, 1947

It appearing that the Affidavit of Fero Williams, filed herein on November 20, 1947, was inadvertently omitted from appellant's Designation of Record on Appeal, and upon request of counsel for the appellant, It Is Ordered that the said Affidavit of Fero Williams be, by the Clerk of this Court, included in the certified transcript of record on appeal. [720]

[Title of District Court and Cause.]

### DESIGNATION OF APPELLEE

Appellee, William G. Skelly, by and through his attorneys, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Transcript of proceedings prior to the arguments.
2. Exhibits submitted in evidence by the plaintiff as follows:
  - I. Exhibits "A," "B," "C," and "D" to Amended Complaint (attached to Amended Complaint, included in Appellant's Transcript).
  - II. Marked portions of Mission Proxy Statement, being on pages 3, 4, 5, 6, 7, 8, 10, 15, and 27, also Exhibit D-1 thereto (Financial Statement of Pacific [1\*] Western Oil Corporation) pages 2, 3, 4, Exhibit E-1 thereto (Financial Statements of Mission Corporation), pages 2 and 3, and Exhibit G thereto (Sunray Oil Corporation Pro Forma Financial Statements), pages 2 and 3—Plaintiff's Exhibit 1 (included in Appellant's Transcript).

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

- III. Letter dated November 13, 1947, to W. G. Skelly with drafts of minutes of Mission Directors' Meeting of October 18, 1947, attached. Plaintiff's Exhibit 2 (included in Appellant's Transcript).
  - IV. Deposition of Thomas A. J. Dockweiler and George Franklin Getty II. Plaintiff's Exhibit 3 (included in Appellant's Transcript).
  - V. Portion of page 5 of Mission Proxy Statement, Proof of November 6, 1947 (page 20, line 20, and page 26 of Court Reporter's Transcript). Plaintiff's Exhibit 4 (not in Appellant's Transcript).
  - VI. Portion of pages 4 and 5 of Defendant's Exhibit A being "Notice of Meeting and Proxy Statement of Sunray Oil Corporation" (included in Appellant's Transcript). This portion read into record (page 23, line 24, and page 27 of Court Reporter's Transcript).
  - VII. Defendant's answer to Plaintiff's Interrogatories (see page 19 of Court Reporter's transcript. Note: This is not Plaintiff's Exhibit 4 as shown by Appellant's Transcript; no number was apparently given to this exhibit.
3. Affidavits, including exhibits thereto attached, filed on behalf of plaintiff William G. Skelly, as follows:

- (a) Affidavit of William G. Skelly with Exhibits 1-8 inclusive and letter and telegram of November 25, 1947, attached.
- (b) Affidavit of Chesley C. Herndon.
- (c) Affidavit of Arch H. Hyden.
- (d) Affidavit of Leo A. Achtschin.
- (e) Affidavit of Harold C. Stuart.

(Note: All these affidavits included in Appellant's Transcripts.) [2]

4. This Designation of Appellee.

JOHN P. THATCHER,  
WILLIAM J. FORMAN,  
VILLARD MARTIN,  
GARRETT LOGAN,  
THEODORE RINEHART,  
HAROLD C. STUART,

Attorneys for Appellee and  
Plaintiff, William G. Skelly.

Proof of Service

State of Nevada,  
County of Ormsby—ss.

I, Harold C. Stuart, of lawful age, being first duly sworn on oath, state that I am one of the attorneys of record for William G. Skelly, plaintiff and appellee in the above entitled action; that on the 9th day of December, 1947, at Carson City, Nevada, I mailed to Messrs. Hawkins, Rhodes and Hawkins and Robert Z. Hawkins, 153 N. Virginia Street, Reno, Nevada, attorneys for the appellant and de-

fendant in said action, a true copy of the above and foregoing "Designation of Appellee."

HAROLD C. STUART.

Subscribed and sworn to before me this 9th day of December, 1947.

[Seal] AMOS P. DICKEY,

Clerk, United States District Court for District of Nevada.

[Endorsed]: Filed Dec. 9, 1947. [3]

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In the District Court of the United States  
in and for the District of Nevada

No. 669

WLLIAM SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,  
Defendant.

Before: Hon. Roger T. Foley,  
Judge.

HEARING ON MOTION FOR TEMPORARY  
INJUNCTION

November 21, 1947

Appearances:

Thatcher, Woodburn & Forman, by William Forman, John P. Thatcher; Garret Logan, Theodore Rheinhart, Villard Martin, Harold C. Stuart, Attorneys for Plaintiff.



Lester D. Summerfield, Bryce Rhodes, Arthur M. Boal, Attorneys for Defendant.

Springmeyer & Thompson, by Bruce R. Thompson; William L. Hanaway, Edward Howell, Attorneys for Sunray Corporation. [4]

Norman Sterry, David S. Hecht, Robert Hawkins, Henley Prince, John Belford, Attorneys on behalf of Western Oil Corporation.

George Rosier, Albert Hillard, Attorneys on behalf of Investment Associates, Inc.

\* \* \* \* \*

Mr. Logan: If your Honor please, it has heretofore been stipulated that Exhibit A to the amended complaint, being contract between Sunray and Getty interests, is a correct copy and we submit it in evidence. It has likewise been agreed that Exhibit B to the amended complaint, which is a copy of the proposed merger agreement, is a correct copy of the document and we submit it in evidence. Then I believe a statement from Mr. Boal as representing Mission, that copy of the proxy statement furnished me is a correct copy of the statement may be admitted in evidence in this case. I do not desire to offer all because there are some things in it that I do not consider binding. There are some portions of it that I desire to offer as admission for the plaintiff.

Mr. Boal: I think the whole should be admitted, your Honor.

Mr. Logan: I am perfectly willing to file or introduce the whole, but I do not want to——

Mr. Boal (interrupting): I would like to have the whole proxy statement before the court.

The Court: I think that is better.

Mr. Logan: I do not want to be bound by all the statements in it.

The Court: You point out then the portions that you do not want to be bound by.

Mr. Logan: I do not want to be bound by any portion of the proxy statement except that portion of it beginning on [16] page 3 and being the fourth paragraph on that page, reading (reads): I have a copy marked of what I want to include and with permission of the Court I would like to introduce it and not be bound by anything not marked and will give opposing counsel a copy.

The Court: It will be so understood. That statement may be admitted in evidence.

Mr. Logan: I will be bound only by the portions marked.

The Court: With that understanding.

Mr. Logan: We offer that as our exhibit.

The Court: Plaintiff's Exhibit No. 1.

Mr. Logan: I also wish to offer in evidence, or to have considered as in evidence, Exhibits C and D to the amended bill of complaint, which as I understand it, are admitted by Mr. Sterry.

Mr. Sterry: That is correct.

Mr. Logan: Your Honor, may I have order of the Court that the depositions which I hold in my hand be opened, filed and published?

The Court: They may be opened.

Mr. Logan: They are depositions of Mr. Dockweiler and Mr. Getty.

The Court: I have a letter from a stockholder who is intervening through the mail, Mr. Schwartz.

Mr. Logan: Mr. Rheinhardt, will you take the original [17] of this deposition and answer the questions? If the Court please, to conserve time.

Mr. Summerfield: May we consider the depositions and affidavits read and let counsel refer to what he wants?

The Court: They will be so considered. Is that satisfactory?

Mr. Logan: Yes, sir. We offer the depositions then in evidence.

The Court: All exhibits offered at this time are admitted in evidence.

Mr. Logan: I have asked for the minutes of directors' meeting of Mission held on October 18, 1947, at San Diego. I would like to inquire if those have been produced.

Mr. Hawkins: I can answer that. Mr. Skelly has a copy.

Mr. Logan: I have, if the Court please, a letter from Mr. Hawkins addressed to Mr. Skelly. (Reads.) We offer this in evidence as our exhibit.

The Court: Admitted in evidence as Exhibit 2.

Mr. Sterry: In the interest of time, your Honor, I offer all documents offered by any party may be received in evidence and considered read.

The Court: Yes. The deposition will be Exhibit 3.

Mr. Logan: What I have here is some stock market prices and I wonder if they can be agreed upon. That on the [18] 4th day of October Pacific Western prices on the New York stock exchange were open 52, low 51, close at  $51\frac{3}{4}$ . That on November 3rd Mission Corporation, being listed on that stock exchange, the market prices were open  $50\frac{1}{2}$ , low  $49\frac{3}{4}$ , close at  $50\frac{1}{2}$ . That on that same date Skelly stock prices, also listed on the New York exchange, were open  $101\frac{1}{8}$ , low 98, close 100.

Mr. Summerfield: Are those from official stock exchange records?

Mr. Logan: I will state to you that they have been furnished to me by your brokers in Reno as being the prices.

Mr. Summerfield: No objection.

Mr. Logan: Mr. Heiden, will you be sworn?

Mr. Summerfield: We object to any oral testimony in this case and are willing to stipulate that the matter be submitted on affidavits and if not prepared can be prepared and filed by Monday, but if we once get into oral testimony, we will never finish. We have the right to cross-examine and offer oral testimony on our side.

The Court: Can't this be handled in affidavit form?

Mr. Logan: Yes, your Honor, we can submit affidavits and we will do that. I should like to state to the Court that there is a portion of Mission proxy statement that I did not have marked that I do want to have before the Court for consideration and that consists of Sunray Oil Corporation balance

sheet of December 31, 1946. It is Exhibit C-1, page 2 and page 3 and the notes on page 6 and page 7. Also Exhibit D-1, the balance sheet of Western Pacific Oil Corporation, a subsidiary company, being on pages 2, 3 and 4 of that exhibit. On Exhibit E-1 the proxy statement, the balance sheet of Mission Corporation and the notes thereto, being pages 2 and 3 of that exhibit. And Exhibit G-1, pages 2 and 3 of that exhibit, being what is denominated "Pro Forma Condensed Consolidated Balance Sheet." I should like now to offer in evidence the following language from a proof of November 6, 1947, of the Mission proxy statement.

Mr. Boal: I object to statements of proof. We have final proxy statement, which speaks for itself. I do not think we should go through preliminary proof which is subject to correction.

Mr. Logan: Here is what I want to put in evidence, if the Court please, if I may be permitted to offer it.

Mr. Boal: We object to it.

The Court: I would like to hear the offer.

Mr. Logan (reads): "As set forth below under the heading 'Purchase by Sunray' \* \* \* \$68." I offer that in evidence. [See page 26.]

The Court: What is the grounds for your objection?

Mr. Boal: That it is statement made and proved which hasn't been proved by any one. The only thing that was filed [20] with the Securities and Exchange Commission is the final proxy statement.

Mr. Hecht: That statement is some young lawyer's idea of what took place.



The Court: Objection will be overruled. It may be admitted in evidence. If you have anything to the contrary, you may offer it. That will be admitted in evidence as Exhibit No. 4.

(Recess for 10 minutes.)

Mr. Thatcher: If the Court please, we ask the Court's indulgence in dividing the time procedure. We have the plaintiff in this case. His examination will be extremely short and we believe the Court should have the opportunity of judging the credibility of that witness, since that witness is the plaintiff and the Court has no such opportunity where it is faced only with broad statements. That is the only oral testimony which we seek to present.

Mr. Summerfield: Your Honor, we would never complete it if that was offered. This is a hearing on preliminary injunction. If he takes the stand, we have the right to cross-examination.

The Court: I think we will stay with the plan we have decided upon.

Mr. Logan: Your Honor please, I should like to have considered as a part of the evidence in this case the defendant's [21] answer to plaintiff's interrogatories, which I think were filed with the clerk yesterday. I should like to have that considered as a part of our proof in this matter, the Mission Corporation's answer to interrogatories which have been filed in this matter.

The Court: That will be so considered and may be marked as an exhibit.



Mr. Logan: If your Honor please, as I understand it, we will be given an opportunity to present affidavits in lieu of the oral testimony we have planned to offer here today.

The Court: That was the understanding.

Mr. Summerfield: It was the understanding that you would be given that opportunity for a date and the time fixed which was next Monday.

Mr. Logan: I think Monday is a little quick. I would appreciate it if we could have until Wednesday, or Tuesday.

Mr. Summerfield: We also suggest as part of that that we file briefs simultaneously on Tuesday.

The Court: You may have until Wednesday to get your affidavits in and that will apply to both sides. It will be understood that affidavits and briefs will be presented Wednesday.

Mr. Logan: That is all the plaintiff has to offer except for the affidavits that will be furnished, except *with* [22] As I said, we have one additional piece of evidence I should like to offer. In view of the statement made by Mr. Hecht, I should like to offer in evidence the following extract from Notice of Meeting and Proxy Statement of Sunray Oil Corporation.

Mr. Hecht (interrupting): We have no objection if the entire thing goes into evidence. I think it is an exhibit to the affidavit of Mr. Wright and I suggest the entire document be received in evidence and Mr. Logan be permitted to refer to such portions he wants.

Mr. Logan: I do not offer the entire document.

Mr. Hecht: We are willing to offer it in evidence.

Mr. Hanaway: My name is Hanaway. I am counsel for the Sunray Oil Corporation. I do not think that the proxy statement is attached to Mr. Wright's affidavit. I want that to be understood by counsel at this point. It has not been attached.

Mr. Hecht: We are willing to offer it.

Mr. Hanaway: Sunray Oil Corporation also is willing to offer it.

The Court: It may be admitted in evidence as Defendant's Exhibit A.

Mr. Logan: I desire to read this portion of it. It is beginning at the bottom of page 4. (Reads:) "As set forth below under the heading \* \* \* \$68." [See page 27.] [23]

The Court: That will be considered in evidence, in part, that portion of the exhibit read.

Mr. Logan: With proof heretofore offered, your Honor, and affidavits to be submitted, that will constitute all the proof on our application for temporary injunction.

The Court: And also on the motion to dismiss?

Mr. Logan: Yes, if your Honor please.

The Court: In the event intervention is granted in each instance the affidavits that are in support of the several interveners will be admitted. Otherwise they are not.

Mr. Hanaway: In the event motion to intervene is granted, we would also like to have affidavit submitted on behalf of Mission Corporation applicable to the Sunray Corporation, in the event it is allowed to come in as intervener.

The Court: I am wondering if you are not trying to evade the ruling of the court. My intention was to not at this time admit affidavits filed by any interveners and I wonder if this is a way of getting around the Court's ruling by having the party now in court make the motion. Now I am not going to permit that.

Mr. Hanaway: No, so far as Sunray is concerned, there was no such intention. It is all subject to your ruling.

The Court: I am not going to permit that to be done. [24] No affidavits will be admitted on behalf of any intervener unless and until motion to intervene is granted.

Mr. Hanaway: That is the basis upon which I made my tender.

The Court: Do you care to proceed with the argument at this time?

(Arguments follow.) [25]

(The following is the portion of the Mission Proxy Statement Proof of November 6, 1947, read into the record by Mr. Logan at page 17, line 20:)

“As set forth below under the heading ‘Purchase by Sunray of Capital Stock of Pacific’ Sunray has agreed to purchase, subject to certain conditions, approximately 85% of the Capital Stock of Pacific at the price of \$68 per share and intends to invite tenders of the balance of such stock at the same price. The price of \$68 per share was arrived at through arms' length negotiations with the sellers. Relatively

little weight was given to the market price on the New York Stock Exchange of Capital Stock of Pacific which on the date of the agreement was approximately \$52 per share. The basis of the conversion of shares of Capital Stock of Pacific not tendered into shares of 1947 Prior Preferred Stock of Sunray was arrived at through arms' length negotiations with the management of Pacific and the cash price of \$68 per share referred to above was the most important factor in determining this basis. On the date of the Agreement of Merger the market price on the New York Stock Exchange of Capital Stock of Pacific was approximately \$57 per share. The basis of the conversion of shares of Capital Stock of [26] Mission into shares of Common Stock of Sunray was arrived at through arms' length negotiations with the management of Mission. Again relatively little weight was given to the market price on the New York Stock Exchange of Capital Stock of Mission, which on the date of the Agreement of Merger was approximately \$54 per share. On said date the market price on the New York Stock Exchange of six shares of Common Stock of Sunray was approximately \$68."

(The following is the portion from pages 4 and 5 of Defendant's Exhibit A, "Notice of Meeting and Proxy Statement" of Sunray Oil Corporation, read into the record by Mr. Logan at page 20, line 24:)

"As set forth below under the heading 'Purchase by Sunray of Capital Stock of Pacific'

Sunray has agreed to purchase, subject to certain conditions, approximately 85% of the Capital Stock of Pacific at the price of \$68 per share and intends to invite tenders of the balance of such stock at the same price. The price of \$68 per share was arrived at through arms' length negotiations with the sellers. Relatively little weight was given to the market price on the New York Stock Exchange of Capital Stock of Pacific which on the date of the agreement was approximately [27] \$52 per share. The basis of the conversion of shares of Capital Stock of Pacific not tendered into shares of 1947 Prior Preferred Stock of Sunray was arrived at through arms' length negotiations with the management of Pacific and the cash price of \$68 per share referred to above was the most important factor in determining this basis. On the date of the Agreement of Merger the market price on the New York Stock Exchange of Capital Stock of Pacific was approximately \$57 per share. The basis of the conversion of shares of Capital Stock of Mission into shares of Common Stock of Sunray was arrived at through arms' length negotiations with the management of Mission. Again relatively little weight was given to the market price on the New York Stock Exchange of Capital Stock of Mission, which on the date of the Agreement of Merger was approximately \$54 per share. On said date the market price on the New York Stock Exchange of six shares of Common Stock of Sunray was approximately \$68." [28]



State of Nevada,  
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court, in and for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had in the case entitled William G. Skelly, Plaintiff, vs. Mission Corporation, a corporation, Defendant, at the hearing on motion for temporary injunction held at Carson City, Nevada, on November 21, 1947, and that the foregoing pages, numbered 1 to 25 inclusive, comprise a true and correct transcript of my said shorthand notes of the proceedings had before the arguments and in the course of the arguments, to the best of my knowledge and ability.

Dated at Carson City, December 9, 1947.

/s/ MARIE D. McINTYRE,  
Official Reporter.

[Endorsed]: Filed Dec. 9, 1947. [29]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT

United States of America,  
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the District Court of the United States for the District of Nevada, do





PLAINTIFF'S EXHIBIT No. 2

New York, N. Y.

Mr. W. G. Skelly, President  
Skelly Oil Company  
Skelly Oil Building  
Tulsa 2, Oklahoma

Enclosed is a draft copy of the minutes of the October 18th meetings. They are still subject to change pending my getting home and making a final considered review of my notes.

Sincerely yours,

/s/ BOB HAWKINS.

Enc.

Received 11/13/47, 10 a.m. [523]

MISSION CORPORATION

Special Meetings of the Board of Directors

October 18, 1947

Minutes of the Special Meetings of the Board of Directors of Mission Corporation Held at Skelly Oil Company. Skelly Oil Building, Tulsa, Oklahoma, Pursuant to Section 10, Article 13, of the By-Laws.

The meetings were called at 9:30 o'clock in the forenoon, Central Standard Time, pursuant to due notice and due supplemental notice thereof, which with due proof of the service thereof, were ordered annexed to the minutes of the meetings.

## Plaintiff's Exhibit No. 2—(Continued)

The following Directors were present in person:

Messrs. W. G. Skelly, Arthur M. Boal,  
Thomas A. J. Dockweiler, Arch H. Hyden,  
Emil Kluth, Fero Williams,

constituting more than a quorum. Director B. I. Graves was absent.

The meeting was called to order and presided over by W. G. Skelly, President. Robert Z. Hawkins, Secretary, acted as Secretary of the meeting and kept the minutes thereof.

The president announced that the first order of business was the approval of the minutes of the organization meeting of the Board of Directors held at Reno, Nevada, on May 8, 1947, and that copies of the minutes of that meeting had been mailed to all of the directors. It was moved by Mr. Boal and seconded by Mr. Kluth that the minutes of the aforesaid organization meeting as submitted be approved. The motion was unanimously carried.

The president presented and read the resignation of B. I. Graves as a director to take effect immediately. It was moved by Mr. Dockweiler and seconded by Mr. Williams that the [524] resignation of Mr. Graves as a director be accepted with deep and sincere regrets and that the secretary express the great appreciation of the Board for the services of Mr. Graves as such director and that the resignation be filed with the records of the corporation. The motion was unanimously carried.

## Plaintiff's Exhibit No. 2—(Continued)

The president announced that the next order of business was the filling of the vacancy created by the resignation of Mr. Graves. Mr. Williams nominated David T. Staples as director to fill the vacancy in the office of director caused by such resignation of Mr. Graves. Said nomination was seconded by Mr. Kluth. Mr. Skelly nominated George F. Getty II as director to fill the vacancy in the office of director caused by such resignation. Said nomination was seconded by Mr. Hyden. In the absence of any other nomination, Mr. Dockweiler moved to close the nominations and the motion was seconded by Mr. Kluth and unanimously carried. The directors were then polled and voted as follows:

For David T. Staples: Messrs. Boal, Dockweiler, Kluth and Williams.

For George F. Getty II: Messrs. Skelly and Hyden.

The president then announced that Mr. Staples had received a majority of the votes cast and that he was duly elected a director of Mission Corporation to serve until the next annual meeting of the stockholders of said corporation and until his successor shall have been elected and shall have qualified.

Mr. Staples was then called into the meeting, accepted the office of such director and thereafter took part in the meeting.

The president announced that the next order of business was to authorize the execution of a proxy

## Plaintiff's Exhibit No. 2—(Continued)

to vote the shares of Skelly Oil Company held by this corporation at the annual meeting of stockholders of Skelly Oil Company to be [525] held on the 18th day of October, 1947, at 11 o'clock in the forenoon, Central Standard Time, at the offices of Skelly Oil Company, Skelly Building, Tulsa, Oklahoma.

Mr. Dockweiler moved the following resolution which was duly seconded by Mr. Williams:

Resolved, That the officers of the corporation, for and on behalf of the corporation, be and they hereby are authorized and empowered to make, execute and deliver a proxy to Skelly Oil Company in the name of this corporation designating and appointing David T. Staples, Arthur M. Boal and Robert Z. Hawkins, and each of them (with full power to act without the others) the attorneys and proxies with full power of substitution to vote upon all the shares of the capital stock of Skelly Oil Company standing in the name of this corporation at the annual meeting of stockholders of Skelly Oil Company to be held in the office of said corporation, Skelly Building, Tulsa, Oklahoma, on October 18, 1947, at 11:00 o'clock a.m., Central Time, and at any adjournment or adjournments thereof (1) to elect ten directors to hold office for the ensuing year and until the election and qualification of their successors, and (2) for the transaction of such



## Plaintiff's Exhibit No. 2—(Continued)

other and further business as may properly come before the meeting or any adjournments thereof, and further

Resolved, That said proxies be and they hereby are authorized and directed to vote the said shares in favor of the election of the following named persons as directors of Skelly Oil Company or if any of such persons shall be unavailable for the office of directors, in favor of the election of such other persons as they in their discretion may determine:

W. G. Skelly  
C. C. Herndon  
Edward Groth  
D. T. Staples  
T. A. J. Dockweiler  
Fero Williams  
Emil Kluth  
S. E. Cavanaugh  
Arthur M. Boal  
O. M. Evans

and further

Resolved, That the Secretary or an Assistant Secretary of the corporation be and he hereby is directed to affix the corporate seal to such proxy and attest the same. [526]

This motion was then discussed, and after due consideration it was adopted by a majority vote.

The president then announced that the resolution had been adopted and directed the secretary



## Plaintiff's Exhibit No. 2—(Continued)

to issue under the corporate seal a proxy in accordance with the resolution.

The president announced that the next order of business was the appointment of auditors for the 1947 annual audit of Mission Corporation. Upon motion duly made, seconded, and unanimously carried it was

Resolved, that subject to the approval by the president of the basis of their compensation, the officers of the corporation, in the name of and for and on behalf of the corporation be and they hereby are authorized to retain the accounting firm of Arthur Andersen & Co. to make and render the corporation's audit for the year ended December 31, 1947.

The president announced that the next order of business was consideration and action with respect to the declaration of a dividend. After discussion and upon motion duly made, seconded and unanimously carried, it was

Resolved, that a cash dividend in the sum of Seventy-five Cents (75c) on the issued and outstanding shares of the capital stock of the Mission Corporation (except such of said shares as are owned and held by Mission Corporation as of November 15, 1947) be, and the same hereby is, declared payable and distributable on December 15, 1947, to all shareholders of Mission Corporation of record at the close of business on November 15, 1947 and that proper notice thereof be published; and be it

Plaintiff's Exhibit No. 2—(Continued)

Further Resolved, that a list of all shareholders of Mission Corporation of record at the close of business on November 15, 1947, be taken; and be it

Further Resolved, that the officers of this corporation in the name of and for and on behalf of this corporation be, and they hereby are, authorized, empowered and directed to do all things necessary and proper for the purpose of carrying out the intent and purpose of this resolution.

The president announced that the next order of business was considering and taking action with respect to the replacement of certain lost stock certificates. The following resolution [527] was then presented:

Whereas, the following parties have represented to this Company that a certificate of the common stock of this Company standing in their respective names, or in the respective names of deceased persons legally represented by them, and representing the number of shares of the common stock of this Company hereafter shown, has been lost, destroyed or stolen,

Name and Address	Full Shares Cert. No.	Amt.
Rosetta Heimhofer 224 N. Main Street, Findlay, Hancock County, State of Ohio.....	027396	5
Johan Larsson 240 - 94th Street Brooklyn 9, New York .....	036048	6
	036049	2
Katherine T. Dickinson 1548 Union Avenue, Memphis, Tenn.....	015869	2

Plaintiff's Exhibit No. 2—(Continued)

and

Whereas, each of the foregoing has furnished this Company with a bond of indemnity in the premises and has requested it to issue and register a certificate in their respective names in like manner of shares in lieu of said certificates so lost, destroyed or stolen,

Now, Therefore, Be It Resolved, that Guaranty Trust Company of New York as Transfer Agent is hereby authorized and directed to issue certificates in the respective names of the above named covering the respective full shares of the common stock of this Company as above set forth, and The Chase National Bank of the City of New York as Registrar, hereby is authorized and directed to register such respective certificates covering full shares of the common stock of this Company and that such certificates when so issued and registered be delivered to the above named parties.

Upon motion duly made and seconded, the resolution was unanimously adopted.

The president then announced that The Guaranty Trust Company, transfer agent of the corporation, had suggested the advisability of the corporation's adopting their form of resolution permitting two officers of Mission Corporation to approve the issuance of stock certificates upon submission of proper documents and indemnity bonds without the necessity of delaying such action until a subsequent

Plaintiff's Exhibit No. 2—(Continued)  
meeting of the board [528] of directors. The following resolution was then presented:

Whereas, it has been found in some cases to work a hardship on stockholders whose certificates of stock or scrip have been lost, stolen or destroyed, to compel them to await the action of the Board of Directors before a new certificate may be issued in place of such lost, stolen or destroyed certificates;

Now, Therefore Be It Resolved that any two of the officers of this Company, to wit, a Director, President, Vice-President, Treasurer, Secretary are hereby empowered to authorize the respective Transfer Agent and Registrar to issue and register a replacement Certificate or certificates of stock of this Company in place of certificates lost, stolen or destroyed, or to make payment of the redemption value of the bearer scrip certificates lost, stolen or destroyed, upon the Company's receiving satisfactory proof of such loss or destruction or theft, and a proper bond of indemnity running to this Company, its Transfer Agents and Registrars, respectively, indemnifying them and each of them against all loss or damage.

Upon motion duly made and seconded, the resolution was unanimously adopted.

The president then announced that the next order of business was consideration of the advisability of sending out a change-of-address card with each divi-

Plaintiff's Exhibit No. 2—(Continued)  
 dend check, and after due consideration thereof, on  
 motion duly made and seconded, it was unanimously

Resolved, that a printed card substantially in  
 words and figures as follows, be enclosed with  
 each check in payment of each common stock  
 dividend:

Mission Corporation  
 153 North Virginia Street,  
 Reno, Nevada

To the Stockholder:

This form should be used to notify us of any  
 change or correction in your adress:

Mission Corporation  
 153 North Virginia Street  
 Reno, Nevada

Please note change of address of undersigned  
 as follows:

Old Address:		New Address:	
Name .....		Name .....	
Street .....		Street .....	
Place .....		Place .....	
Certificate No. ....		Number of Shares.....	
Date:.....19 .....		.....	

Signature of Stockholder

(Sign in full just as on stock certificate)

The president then announced that the next order  
 of business was consideration of action regarding  
 the account with The First National Bank of the



## Plaintiff's Exhibit No. 2—(Continued)

City of New York. After discussion, upon motion duly made and seconded, it was unanimously

Resolved, that The First National Bank of the City of New York is designated a depository of this corporation; and

Further Resolved, that all drafts, checks, and other instruments or orders for the payment of money drawn against the account or accounts of this corporation shall be signed by any two of the following:

D. T. Staples

Fero Williams

Emil Kluth

Robert Z. Hawkins

Further Resolved, that the depository above designated is authorized to place to the credit of the account, or any of the accounts, of this corporation, funds, drafts, checks or other property delivered to it for deposit for account of this corporation, whether or not endorsed with the name of this corporation by rubber stamp, facsimile, mechanical, manual or other signature, and any such endorsement by whomsoever affixed shall be the indorsement of this corporation, provided that if any such funds, drafts, checks or other property shall bear, or be accompanied by, directions (by whomever made) for deposit to a specific account, then such deposit shall be to the credit of such specific account; and

Further Resolved, that the depository is hereby directed to accept and/or pay and/or



## Plaintiff's Exhibit No. 2—(Continued)

apply without limit as to amount, without inquiry and without regard to the application of any such draft, check, instrument or order for the payment of money, or the proceeds thereof, any draft, check, instrument or order for the payment of money drawn on such account or accounts, which draft, check, instrument or order for the payment of money bears the signature or signatures as required by these resolutions, including drafts, checks, instruments or orders for the payment of money, to the order of any person whose signature appears thereon, or of any other officer or officers, agent or agents of this corporation, which may be deposited with, or delivered or transferred to, the depository or to any other person, firm or corporation, for the personal credit or account of any such officer or agent; and the depository shall not be liable for any disposition which any such officer or agent shall make of all or any part of any draft, check, instrument or order for the payment of money drawn on such account or accounts or the proceeds thereof, notwithstanding that such disposition may be for the personal account or benefit or in payment of the individual obligation of any such officer or agent to the depository or otherwise. [530]

The president announced that the next order of business was consideration and action regarding

Plaintiff's Exhibit No. 2—(Continued)  
a dividend account for common stock dividend No. 18. The following resolution was then presented:

Whereas, by resolution duly adopted by the Board of Directors of this Corporation on October 18, 1947, a dividend in the sum of Seventy-five Cents (75c) per share on the issued and outstanding shares of the common stock of the corporation was declared payable and distributable on December 15, 1947, to stockholders of the corporation of record as at the close of business November 15, 1947; and

Whereas, in connection therewith it will be necessary to create and open a dividend account with a Bank, Trust Company or other dividend disbursing agent to provide for the disbursement of such dividend;

Now, Therefore, Be It Resolved, that the officers of the corporation, for and on behalf of the corporation, be, and they hereby are, authorized and empowered to open a dividend account with The Security National Bank, Reno, Nevada, and The First National Bank of the City of New York, New York, New York; and be it further

Resolved, that the officers of the corporation be authorized to transfer or cause to be transferred to such accounts the sum of One Million and Thirty Thousand and Six Hundred and Eight and Seventy-five One Hundredths Dollars (\$1,030,608.75) which funds shall be subject to

Plaintiff's Exhibit No. 2—(Continued)  
withdrawal upon checks or other orders when signed jointly, and for and on behalf of the corporation, by W. G. Skelly and Robert Z. Hawkins; and be it further

Resolved, that the said The Security National Bank and The First National Bank of the City of New York be authorized to honor and make payment upon checks or other orders issued for and on behalf of the corporation upon said dividend account bearing the facsimile signatures of W. G. Skelly and Robert Z. Hawkins; and be it further

Resolved, that the Treasurer of this corporation be authorized to make arrangements with said Banks for the payment of the aforesaid dividend in accordance with the rules and regulations of said Banks; and be it further

Resolved, that the Secretary of this corporation be, and he hereby is, authorized and directed to present certified copies of this resolution, in duplicate, to each of said Banks.

Upon motion duly made and seconded, the resolution was unanimously adopted.

Mr. Dockweiler moved the adoption of the following resolution, which was duly seconded by Mr. Williams and adopted [531] by the vote of all members of the board, except Messrs. Skelly and Hyden, who voted against the same:

Whereas, pursuant to Article III of the By-Laws of the corporation, the board of directors

Plaintiff's Exhibit No. 2—(Continued)  
is empowered to appoint and remove, at their pleasure, officers of the corporation, now, therefore, be it

Resolved that the term of office of Mr. W. G. Skelly as president of the corporation be and it hereby is terminated, to take effect immediately, and further

Resolved that a vacancy is hereby declared to exist in the office of the president of the corporation.

Upon motion made by Mr. Dockweiler and seconded by Mr. Williams and adopted by the vote of a majority of the board, Mr. Staples not voting thereon, it was

Resolved that D. T. Staples be and he hereby is elected president of the corporation to fill the vacancy declared to exist in that office; to serve as such president until the first meeting of the board of directors following the next annual meeting of the corporation and until his successor shall have been duly elected and qualified.

Mr. Staples accepted his election to the office of president of the corporation and immediately assumed such office and took over the chairmanship of the meeting from Mr. Skelly.

Upon motion duly made, seconded and unani-  
mously carried, it was resolved that the meeting be recessed until 3 o'clock that afternoon, to reconvene in the Board Room of the Skelly Oil Company

Plaintiff's Exhibit No. 2—(Continued)  
 in the Skelly Building, Tulsa, Oklahoma. The meeting thereupon recessed at 10:55 a.m., Central Standard Time, on October 18, 1947, to reconvene at 3 o'clock p.m., Central Standard Time, Saturday, October 18, 1947, at the place so designated. [532]

Recessed Special Meeting Which Resumed Its  
 Deliberations at 3 o'Clock P.M., Central Standard Time, on October 18, 1947, in the Board Room of Skelly Oil Company, Skelly Building, Tulsa, Oklahoma.

The meeting resumed at 3 o'clock p.m., Central Standard Time on October 18, 1947, in the Board Room of Skelly Oil Company, Skelly Building, Tulsa, Oklahoma. The meeting was called to order and presided over by D. T. Staples, President. Robert Z. Hawkins, the Secretary, acted as secretary of the meeting, and kept the minutes thereof. In response to an inquiry by the President, the Secretary reported the following Directors present:

D. T. Staples	Emil Kluth
Arthur M. Boal	W. G. Skelly
Thomas A. J. Dockweiler	Fero Williams
Arch H. Hyden	

being all of the directors of the corporation.

The President announced that the next order of business was the consideration of an offer in writing dated the 18th day of October, 1947, from Sunray Oil Corporation to Mission Corporation to enter into an agreement of merger upon the terms and conditions set forth in the proposed agreement,



## Plaintiff's Exhibit No. 2—(Continued)

providing for the merger subject to the terms and conditions set forth in said agreement.

David Hecht, Esquire, and Barnabas B. Hadfield, Esquire, were present at the meeting at the invitation of the President, Mr. Staples, to answer such questions as the Directors might wish to put to them concerning the merger. Mr. Skelly requested permission to have his personal counsel present, which request was granted, and Villard Martin, Esquire, of the Tulsa Bar, and Joseph A. Patrick, Esquire, of the New York Bar, were present at the meeting as Mr. Skelly's counsel. W. K. Petigrue, Esquire, counsel for Sunray Oil Corporation, was also present at the meeting and formally tendered the above-mentioned written offer of Sunray Oil Corporation and then retired. The President read the offer and directed that it be filed with the minutes of the meeting.

The President then stated that the offer of Sunray [533] Oil Corporation was open for discussion and extended discussion ensued in which all the directors took part. Many questions were directed to Mr. Hecht and to Mr. Hadfield, which they answered and then left the room. The discussion covered the market prices of the securities of the constituent corporations for the past few years, their status, businesses, earnings, indebtedness, reserves, acreage, production, properties and assets, the dividends paid by the constituent companies, the prospects of the surviving corporation, the continuity and changes in indirect ownership

Plaintiff's Exhibit No. 2—(Continued)  
of assets and values of the constituent corporations, Mission Corporation's liquidating values and other related matters and factors.

Mr. Skelly presented the following resolution which was seconded by Mr. Hyden:

Whereas, There has been presented to this Board of Directors this afternoon for the first time a proposed merger agreement between this corporation and the Sunray and Pacific Western Oil Corporations, and various other documents and material pertaining to such proposed Merger; and

Whereas, This Board has heretofore taken no action authorizing or designating any person or persons to negotiate the aforesaid Agreement of Merger and the terms and conditions included therein, or to prepare the proxy material and other documents and material pertaining to such Merger which have been presented at this meeting for the approval of this Board; and

Whereas, The members of this Board have not had sufficient time to read and consider the aforesaid documents and further, do not have a reliable opinion of disinterested counsel regarding the legality of the proposed Merger Agreement or any reliable information to enable it to consider the fairness of the terms and conditions of said Merger Agreement; and

Whereas, It is necessary for the protection of the interests of all of the stockholders of

## Plaintiff's Exhibit No. 2—(Continued)

this corporation that this Board have an opinion of reliable disinterested counsel regarding the legality of the proposed Merger Agreement and be fully informed regarding all the facts and circumstances affecting the proposed Merger Agreement and the fairness of the terms and conditions thereof;

Now, Therefore Be It Resolved, That this meeting be recessed until eleven a.m. on the 15th day of November, 1947; and further [534]

Resolved, That this Board designate a Committee to retain reliable disinterested counsel to render a written opinion regarding the legality of the said Merger Agreement, investigate all the facts and circumstances relating to the proposed Merger Agreement, secure all available information relating to the fairness of the terms and conditions contained therein including a common yardstick appraisal of the values of the constituent corporations and the Skelly Oil Company and deliver to each of the members of this Board a copy of the aforesaid legal opinion and a written report of the results of their investigation including the aforesaid available information relating to the fairness of the terms and conditions of said Merger Agreement, together with their recommendations regarding the acceptance of the terms and conditions of said Merger Agreement or the modification of such terms and conditions, as the case may be, for the consideration

Plaintiff's Exhibit No. 2—(Continued)

and action of this Board at the continuation of the meeting of this Board at eleven o'clock on November 15, 1947.

Mr. Skelly stated that he had not been consulted in connection with this particular merger. However it was pointed out that many weeks previous to this meeting he had been consulted about a proposed merger involving Mission Corporation, Pacific Western Oil Corporation, Skelly Oil Company and Sunray Oil Corporation and further he had been invited to Los Angeles to take part in discussions which were going on there regarding the matter and had failed to go to Los Angeles to attend such discussions, and that some days prior to this meeting he had been consulted regarding the proposed merger involving only Mission Corporation, Pacific Western Oil Corporation and Sunray Oil Corporation.

A number of directors expressed the opinion that they had sufficient data on hand and had already sufficiently examined into and analyzed the proposed merger between Mission Corporation, Pacific Western Oil Corporation and Sunray Oil Corporation and the data pertaining thereto to consider and pass upon such merger and its merits and to submit the same to the stockholders of Mission Corporation for their approval or rejection.

Certain of the directors indicated that such proposed merger had such merit and benefit to the Mission Corporation [535] stockholders that the



## Plaintiff's Exhibit No. 2—(Continued)

directors might be considered delinquent in their duties to said stockholders if they did not submit it to the stockholders of Mission Corporation for their decision in the premises.

One director pointed out that if changing conditions occurred or if the information and data upon which they might base their approval subsequently proved to be inaccurate under the terms of the merger agreement Mission Corporation could withdraw from the merger agreement at any time prior to the stockholders meeting.

With respect to the proposed merger the attention of the directors was called to the specific provisions of Article VI of the proposed agreement of merger providing that such agreement may be abandoned by any of the constituent corporations at any time prior to its adoption by the stockholders of all of the Constituent Corporations, the Constituent Corporations so referred to in said agreement of merger being Mission Corporation, Pacific Western Oil Corporation and Sunray Oil Corporation.

In response to a question by Mr. Skelly as to the rights of dissenting stockholders, he was advised that stockholders did have the right to dissent under the Nevada Law and that the proxy statement being considered at this meeting incorporates the provisions of the Nevada Statutes covering the rights of dissenting stockholders.

Mr. Boal stated that the Merger Agreement was in all respects legal and that the corporation could



## Plaintiff's Exhibit No. 2—(Continued)

legally submit it to its stockholders for their consideration, and that the other documents presented to the Board, or to be presented, in connection with any such proposed merger would be in proper legal form.

The president thereupon put the foregoing resolution as submitted by Mr. Skelly to vote but it was not carried, Mr. Skelly and Mr. Hyden voting for such resolution and all of the other directors voting against it. [536]

Mr. Skelly then read a statement which the President, at Mr. Skelly's request, directed be filed with the records of this meeting.

Mr. Skelly stated that he believed the producing properties of Skelly Oil Company could be sold for \$160,000,000 to \$185,000,000 and that the Skelly Oil Company common stock had an equivalent value of \$175 to \$200 per share, and requested that this statement be incorporated in the minutes.

Mr. Dockweiler, after stating to the meeting that he believed that the proposed merger under all conditions and circumstances was fair to all of the stockholders of Mission Corporation, withdrew from the meeting.

Mr. Boal then presented and read to the meeting (1) the agreement of merger, (2) the proxy statement, (3) the form of letter from the president to the stockholders, (4) the form of proxy, and (5) the form of notice of the meeting of stockholders to be held in Reno, Nevada, on December 6, 1947.

## Plaintiff's Exhibit No. 2—(Continued)

The reading of these documents was frequently interrupted by questions asked by various directors concerning certain of their provisions.

Mr. Skelly then proposed the following resolution which was seconded by Mr. Hyden:

Whereas, It appears that the proposed merger agreement between Pacific Western Oil Corporation, Mission Corporation and Sunray Oil Corporation and proxy statement have been prepared by Counsel for Sunray and Eastman Dillon in consultation with counsel for the Getty interests; and

Whereas, Said merger agreement and proxy statement were first submitted to counsel for Mission on Friday, October 17, 1947, and it is apparent that counsel for Mission has not been afforded sufficient time to familiarize himself with all the terms and conditions of said merger agreement and proxy statement in order to advise the directors of Mission with respect to the legality of the merger, the accuracy and sufficiency of the proxy statement and the liability of the directors of Mission in connection therewith; [537]

Be It Resolved, That further consideration of proposed merger be postponed until Monday, October 20th, at 10 o'clock a.m. and that the meeting do now recess until that time.

Mr. Boal stated that he had examined the merger agreement and had taken Sunray's proxy state-

## Plaintiff's Exhibit No. 2—(Continued)

ment and adopted it to Mission, that he was satisfied that the merger agreement, proxy statements, president's letter, notice of meeting and the proxy were legal and proper; that the proxy statement was not in final form, that it was subject to such correction as the officers should see fit to make before final mailing to the stockholders and that this is the customary procedure in such cases.

At this point Mr. Dockweiler was recalled to the meeting.

The president thereupon put the resolution to a vote and it was lost, Mr. Skelly and Mr. Hyden voting in favor of it and all of the other directors voting in opposition.

Mr. Dockweiler then again retired from the meeting.

Mr. Boal then presented the following resolution which was seconded by Mr. Williams:

Resolved, That the proposed plan of Reorganization of this corporation, Pacific Western Oil Corporation and Sunray Oil Corporation, involving the merger of this corporation and Pacific Western Oil Corporation with and into Sunray Oil Corporation, as presented to this meeting and ordered spread upon the minutes thereof, is hereby in all respects adopted and approved; and further

Resolved, That the proposed Agreement of Merger between this Corporation and a majority of the Directors thereof, Pacific

## Plaintiff's Exhibit No. 2—(Continued)

Western Oil Corporation and a majority of the Directors thereof, and Sunray Oil Corporation and a majority of Directors thereof, providing for the merger of this corporation and Pacific Western Oil Corporation with and into Sunray Oil Corporation, pursuant to Section 59 of the General Corporation Law of the State of Delaware and Section 39 of the General Corporation Law of the State of Nevada, as set forth in the Plan of Reorganization approved at this meeting, is hereby and in all respects approved; and further [538]

Resolved, That the Directors of this Corporation, or a majority of them, be and they are hereby authorized and directed to sign and enter into said Agreement of Merger under the corporate seal of this Corporation which the Secretary, or an Assistant Secretary, is hereby authorized and directed to affix and attest; and further

Resolved, That the President or any Vice-President of this Corporation is hereby authorized and directed to execute said Agreement of Merger in the name and on behalf of this Corporation and under its corporate seal affixed and attested as aforesaid; and further

Resolved, That said Agreement of Merger when so signed and entered into and sealed by and on behalf of this Corporation and a majority of its Directors, and Pacific Western Oil Corporation and a majority of its

## Plaintiff's Exhibit No. 2—(Continued)

Directors, and Sunray Oil Corporation and a majority of its Directors, be submitted to the stockholders of this Corporation at a meeting thereof, which the President or any Vice President is hereby authorized and directed to call, to be held at the principal office of the Corporation in the State of Nevada, at 153 North Virginia Street, Reno, on December 6, 1947, at 10:00 o'clock in the forenoon, Pacific Standard Time, or any adjourned date, for the purpose of considering and taking action with respect to said Agreement of Merger; and further

Resolved, That the close of business on October 28, 1947, be and it is hereby fixed as the Record Date for the determination of stockholders entitled to notice of and to vote at the said special meeting of the stockholders of this Corporation and that the proper officers of this Corporation be and they are hereby authorized and directed to notify the New York Stock Exchange of the fixing of such record date; and further

Resolved, That Messrs. Emil Kluth, Fero Williams and Robert Z. Hawkins be and they hereby are requested to act as proxies, with power of substitution and revocation as to each, for such stockholders of the Corporation as desire to appoint them, or any of them, as proxy to act for them at such special meeting of stockholders; and further



## Plaintiff's Exhibit No. 2—(Continued)

Resolved, That the form of notice of such meeting; the form of proxy statement to be furnished in connection with the solicitation of proxies for such meeting; the form of proxy and the form of a letter to stockholders, all as presented to this meeting be and they are hereby approved, subject to such changes therein or additions thereto, if any, as the proper officers of the Corporation may approve, such approval to be conclusively evidenced by the mailing thereof; and further

Resolved, That the proper officers of this Corporation be and they are hereby authorized and directed, at such time or times as they may deem advisable to take any and all such action and to execute and deliver any and all such documents as they may deem advisable in order to carry out the execution of the [539] Plan of Reorganization and Merger of this Corporation and Pacific Western Oil Corporation with and into Sunray Oil Corporation, as provided in said Agreement of Merger.

The President put the foregoing resolution to vote and it was adopted. Messrs. Boal, Kluth, Staples and Williams voted in favor of it and Mr. Skelly and Mr. Hyden voted in opposition. Mr. Dockweiler was not present in the meeting and did not vote on said resolution. The President thereupon declared the resolution adopted.

Mr. Dockweiler then returned to the meeting.

## Plaintiff's Exhibit No. 2—(Continued)

The President announced that the next order of business was the ratification of the appointment of counsel acting for the corporation in connection with the proposed plan of reorganization and merger. Upon motion duly made by Mr. Kluth and seconded by Mr. Williams (Mr. Boal not voting thereon) it was resolved by a majority of the board as follows:

Resolved, That the employment of Arthur M. Boal, Esquire, as attorney for Mission Corporation in connection with the proposed merger be and it hereby is ratified and approved.

Mr. Skelly asked to be recorded as voting No on the above resolution and Mr. Hyden asked to be recorded as not voting.

The President then announced that the next order of business was authorization of the addition of D. T. Staples as a signatory on the corporation's various bank accounts and safety deposit boxes. Upon motion duly made, seconded and unanimously carried, it was

Resolved, That D. T. Staples be added as an additional signator on the respective depositary accounts and safety deposit boxes of this corporation, and that the secretary be empowered to furnish certified copies and the signature of said D. T. Staples to all such banks and deposit companies.

The attention of the board of directors was then called to the matter of the President's salary.

## Plaintiff's Exhibit No. 2—(Continued)

On motion duly made and seconded the following resolution was adopted by a majority of the directors present (Mr. Staples not voting thereon):

Resolved, That D. T. Staples, as President of Mission Corporation be paid an annual salary of \$5000 per annum in monthly installments.

The President announced that the next order of business was the appointment of inspectors of election for the hereinbefore referred to meeting of stockholders to be held at Reno, Nevada, December 6, 1947. Thereupon the following resolution was adopted by a majority of the directors present:

Resolved, That J. Kroupa, V. Tomlinson and M. Stratton be appointed inspectors of election to serve as such at the meeting of the stockholders of Mission Corporation to be held at Reno, Nevada, December 6, 1947, and that R. T. Quivey and C. B. Rhodes be appointed as alternate inspectors of election at said meeting in the event any regular inspector should be unable to serve.

Mr. Williams then presented the following resolution, which was duly seconded by Mr. Kluth and adopted by a majority of the directors:

Resolved, That the proper officers of Skelly Oil Corporation be and they hereby are requested to permit any audits of the books of Skelly Oil Company, and specifically an audit as of August 31, 1947, by Arthur Andersen & Co. which may be required in connection

Plaintiff's Exhibit No. 2—(Continued)  
with the merger of Mission Corporation, Pacific Western Oil Corporation, and Sunray Oil Corporation or any public or private financing related thereto, or in connection with any proxy material, listing applications, registration statements or other documents related thereto, and to furnish any and all other information in connection with the foregoing, which may be requested by Mission Corporation, Pacific Western Oil Corporation or Sunray Oil Corporation, including, without being limited to, a list of the customers of the excess crude production of Skelly Oil Company and the amounts of such purchases, during 1947, by the principal purchasers.

The President announced that the next order of business was an authorization to the President to order new mechanical equipment for stock records and dividend disbursing department of the corporation. Upon motion duly made, seconded and unanimously carried, the following resolution was adopted: [541]

Resolved, That the President and Secretary be authorized to consider and act as in their judgment appears to be in the best interests of Mission Corporation in ordering new mechanical equipment for the Stock Records and Dividend Disbursing Department of said corporation.

There being no further business, the meeting adjourned at 7:45 p.m. Central Standard Time.

.....,

Secretary. [542]

## Plaintiff's Exhibit No. 2—(Continued)

“Dominant stockholder votes for merger which provides immediate cash payment to him at rate satisfactory to him—forces balance of stockholders to accept securities of surviving corporation at a rate negotiated for them by dominant stockholder who has no interest in fairness of such terms and who has denied members of the Board who would not accept his decision in the matter an opportunity to examine the terms and conditions of the merger because the time involved in so protecting the interests of the stockholders might adversely affect the dominant stockholder's tax position—forces stockholders who accept securities to risk the vicissitudes of the market and incur expense of marketing such shares to secure cash for their holdings—forces dissenting stockholders to resort to the intricate procedure set up by statute to get cash payment for their shares and compels them too to bear the legal and other expense of such proceedings and run the risk that the end of the period of time consumed by such proceedings the surviving corporation will be unable, because of the substantial cash payments made to the dominant stockholder for his shares to make cash payments to such dissenters.”

Statement made by Mr. Skelly.

RZH

[Endorsed]: Filed Nov. 21, 1947. [543]



## PLAINTIFF'S EXHIBIT No. 3

In the District Court of the United States for  
the Southern District of California, Central  
Division

Civil Action No. 7740-Y

WILLIAM G. SKELLY,

Plaintiff,

vs.

THOMAS A. J. DOCKWEILER and GEORGE  
FRANKLIN GETTY II, etc., et al.,

Defendants.

DEPOSITION OF  
THOMAS A. J. DOCKWEILER

a Defendant in the Above-Entitled Action, Taken at  
9:45 a.m. on Saturday, November 15, 1947, at  
Los Angeles, California.

Appearances of Counsel: (See Title Page.)

W. L. Heathcote, Official Court Reporter, Deposition  
Notary, 108 West Second St., Los Angeles 12,  
Calif. · MUTual 1116. Reported by: Robert H.  
Clark, Laura Breska. [544]

Plaintiff's Exhibit No. 3—(Continued)

In the United States District Court for the  
District of Nevada

Civil Action No. 669

WILLIAM G. SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,  
Defendant.

NOTICE TO TAKE ORAL DEPOSITIONS

To Mission Corporation, a corporation, the De-  
fendant:

Please take notice that by order of the Honorable Judge Roger T. Foley, Judge of the District Court of the United States for the District of Nevada, dated the 4th day of November, 1947, the plaintiff in the above entitled action will take the depositions of Thomas A. J. Dockweiler, whose address is 1035 Van Nuys Building, 7th and Spring Streets, Los Angeles, California, and the deposition of George F. Getty II, whose address is 2355 Adair Street, San Marino, California, and the deposition J. Paul Getty, whose address is Room 424 Junipher Building, Santa Monica, California, upon oral examination pursuant to the Federal Rules of Civil Procedure, as amended, at Room 631 Van Nuys Building, 210 West Seventh Street, in the City of Los Angeles, State of California, at 10 o'clock a.m. in

Plaintiff's Exhibit No. 3—(Continued)  
 the forenoon of the 15th day of November, 1947,  
 and said examination will proceed from day to  
 day until completed.

Dated this 4th day of November, 1947.

/s/ JOHN P. THATCHER  
 WM. WOODBURN  
 HAROLD C. STUART  
 THEODORE RINEHART  
 VILLARD MARTIN  
 GARRETT LOGAN

Attorneys for Plaintiff

Service of the above notice admitted this.....  
 day of November, 1947.

MISSION CORPORATION,  
 A Corporation,

By .....

[Title of District Court and Cause.]

### AFFIDAVIT OF SERVICE

State of Nevada,  
 County of Washoe—ss.

Catherine Tweedt, being first duly sworn, deposes  
 and says:

That she is a resident of Reno, Washoe County,  
 Nevada, and over the age of twenty-one years. That  
 on the 4th day of November, 1947, at the hour of  
 3:25 p.m. of said day, she delivered to one Bryce  
 Rhodes, at the principal office of Mission Corpora-

Plaintiff's Exhibit No. 3—(Continued)

tion in the State of Nevada, to wit, 153 North Virginia Street, Room 19, Stack Building, in said city, a copy of the within notice, there being no officer or agent of Mission Corporation present at said office at said time, and that the said Bryce Rhodes was at said time and place in charge of the principal office of Mission Corporation.

CATHERINE TWEEDT.

Subscribed and sworn to before me this 4th day of November, 1947.

[Seal] WM. WOODBURN,

Notary Public in and for the County of Washoe,  
State of Nevada.

[Endorsed]: Filed Nov. 6, 1947.

In the United States District Court for the  
District of Nevada

Civil Action No. 669

WILLIAM G. SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,

Defendant.

The depositions of Thomas A. J. Dockweiler, of 1035 Van Nuys Building, 7th and Spring Streets, City of Los Angeles, State of California, and George Franklin Getty II, of 2355 Adair Street,

Plaintiff's Exhibit No. 3—(Continued)

San Marino, State of California, were taken before me, a notary public in and for the County of Los Angeles, State of California, on the 15th day of November, 1947, at Room 631 Van Nuys Building, 210 West Seventh Street, in the City of Los Angeles, in the County of Los Angeles, State of California, pursuant to the annexed notice, on behalf of the plaintiff in the above-entitled action pending in the above-named court. Villard Martin, Esq., Garrett Logan, Esq., Theodore Rinehart, Esq., and Harold C. Stuart, Esq., of the City of Tulsa, State of Oklahoma, appeared as attorneys for the plaintiff, and Arthur M. Boal, Esq., of the City of New York, State of New York, Lester D. Summerfield, Esq., and Robert C. Hawkins, Esq., of the City of Reno, State of Nevada, appeared as attorneys for the defendant. [545]

Mr. Logan: I may show for the record that the following appear for the plaintiff:

Mr. Howard Wright, Mr. Villard Martin, Mr. Garrett Logan, Mr. Theodore R. Rinehart, and Mr. Harold C. Stuart, in case No. 7740-Y Civil, in the United States District Court for the Southern District of California, Central Division, and that all of the above named, except Mr. Wright, appear on behalf of the plaintiff in case No. 669 Civil, in the United States District Court for the District of Nevada.

I do not know the appearances for the defendants.

Mr. Sterry: I suggest that one of the notaries went around and took the appearances down, and



## Plaintiff's Exhibit No. 3—(Continued)

I believe has them. May the record show that their appearances may be typed out, without taking the time of the appearances being repeated? Those are all in the Los Angeles case.

I think my understanding is that there is no party to the Nevada suit except the Mission Corporation. Therefore, of course, the counsel appearing for the parties in the suit pending in the District Court here would not properly appear for the parties there in the Nevada suit, but that is because they are not parties in that suit.

Mr. Rinehart: Who is the gentleman on your right?

Mr. Sterry: Mr. Hecht. That brings up another question, gentlemen. I haven't seen your papers, but I understand you gave notice to take the deposition of Mr. Thomas Dockweiler and Mr. George Getty II, as trustees, [546] in the suit pending in the District Court of California, and also consider them as witnesses to give a deposition in the suit pending in the State of Nevada.

Now, I assume probably that you want to ask practically the same questions, and can it be understood that any question asked—I suggest that the notary write out two originals, and that they be filed one in each suit. I don't assume you want to go through the form of taking two depositions at the same time; isn't that correct?

Mr. Logan: I think that is correct. If you will permit, I will make one more suggestion, that we might agree that the original of the deposition

Plaintiff's Exhibit No. 3—(Continued)

be filed in the Nevada case, and that the first copy be executed by the Notary and signed by the witness, and be filed in the California case. I don't insist on that, but we will save a lot of transcript.

Mr. Sterry: It is all right with me if you can get by the court, and if the court will accept it. I think there is a rule, however, that I am not too familiar with.

Mr. Dockweiler: There is a rule requiring it to be a first impression.

Mr. Sterry: That is a local rule, as I understand it, that the first impression be filed. As far as the parties are concerned, it will be all right, if you want to take that chance and get an order from the court. I think you can get an order from the court. [547]

Mr. Logan: In that case we can have two originals.

Mr. Sterry: I think you can get an order from the court. The local rule requires a first impression, and in view of that rule you might be in difficulty. It is your deposition and you can take it any way you want.

Can we have this understanding, of course, that as the deposition progresses there might be observations, questions asked, and objections made by counsel for parties to the suit in the California District Court, and they are not appearing in the Nevada suit, but that, because of convenience, the depositions may be considered in both suits, and

## Plaintiff's Exhibit No. 3—(Continued)

that no such observations, objections, or questions shall be deemed to constitute any appearance by any of such parties represented by such counsel in the Nevada suit?

Mr. Logan: That is true.

Mr. Sterry: I don't think it would be, but that is a practical proposition.

Mr. Farrand: It is not only agreeable, but I want it clearly understood that as the representative for Mr. George Franklin Getty II, as co-trustee, that our appearance here is not an appearance, and does not make an appearance, in the Nevada suit.

Mr. Logan: The plaintiff will stipulate that all parties present and their counsel—that the plaintiff will not assert in the Nevada case that what transpires here [548] today in the taking of what might be termed a joint deposition in the two cases will constitute any appearance of the defendants in the California case, who are not parties to the Nevada case, and will not constitute their entry of appearance in the Nevada case.

Mr. Boal: May it be also understood that the Mission Corporation is not appearing in the California case?

Mr. Logan: That is right. I would say it this way: As a matter of convenience for all parties, we are taking the depositions on common question and answer to be used in each case, but that for all jurisdictional purposes these depositions are separately taken.

## Plaintiff's Exhibit No. 3—(Continued)

Mr. Sterry: And do not constitute an appearance in either case for the defendants in the other case, who are not in that case.

Mr. Logan: That is entirely agreeable.

There is one other point. We are ten minutes early on our time for the taking of the deposition, or the commencement of the deposition in the Nevada case. That was noticed for ten o'clock.

Mr. Sterry: It will be taken jointly, so time will be waived.

Mr. Logan: So stipulated between all parties?

(No objection was made by any counsel.)

Mr. Sterry: To save time, any question asked or objection made by counsel for any of the parties in the [549] California suit may be deemed as made by all of them, unless counsel for one of the parties expressly declined to be represented by that objection, and that any such question or objection made by any of the California appearances may, in view of the joint deposition, be considered as made on behalf of the Mission Corporation, in that suit; likewise, any objection made or statement asked by Mission counsel may be considered as made on behalf of the parties in the California suit.

Mr. Logan: That is agreeable.

Plaintiff's Exhibit No. 3—(Continued)

Deposition of

THOMAS A. J. DOCKWEILER

called as a witness by the plaintiff herein, having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Logan:

Q. Please state your name.

A. Thomas A. J. Dockweiler.

Q. Your age, residence, and occupation or profession?

A. 55 years old; 27 St. James Park, Los Angeles, California; attorney and counsellor at law.

Q. How long have you been engaged in the practice of law? [550]

A. Since May, 1915.

Q. Did you know George F. Getty during his lifetime?

A. I did.

Q. What, briefly, were your business or professional relationships with him?

A. I had no professional relationship with him in the sense of ever representing him as counsel.

He was represented, so far as I know, by Rush Blodgett. However, I had contact with him in matters pertaining to the oil business and his own business.

Q. Over what periods of time was this?

A. It would be hard to say; some years in the twenties, I think.

Q. Did you know Sarah C. Getty during her lifetime?

A. I did.



Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. What was your business or professional relationship with her, if any?

A. Part of the time I acted as her counsel, with the consent of her regular counsel, Rush Blodgett. Rush Blodgett had been counsel for Mr. and Mrs. George F. Getty, and continued to advise Mrs. Getty after George F. Getty died.

After Mr. Blodgett, as I recall, left or gave up the general counsellorship of George F. Getty, Incorporated, Mr. George F. Getty's corporation, and devoted himself to other business, he didn't have as much time, or probably as much inclination, I assume, and from time to time I acted as [551] counsel for Mrs. Getty.

Q. Did you or your firm act as attorneys in the probate of the estate of Sarah C. Getty?

A. Yes.

Q. How long have you known J. Paul Getty?

A. Oh, I should say since the early twenties.

Q. Again, briefly, what have your business and professional relationships been with him?

A. I have been his counsel since that time.

Q. Do you know George Franklin Getty II?

A. I do.

Q. What, if any, relation is he to J. Paul Getty?

A. The eldest son.

Q. Was J. Paul Getty the original trustee under a declaration of trust wherein Sarah C. Getty was trustor, dated December 31, 1934?      A. Yes.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. When, if at all, did he cease to be such trustee?      A. September, 1941.

Q. Who are the present trustee or trustees of the trust?

A. George F. Getty, as eldest son, and myself.

Q. On what date did you become trustee?

A. About the middle of September, 1941, upon Mr. Getty's resignation.

Q. In other words, you succeeded him?

A. I succeeded Mr. Getty. [552]

Q. By whom or in what manner was your appointment made?

A. Pursuant to the terms of the trust declaration by Mr. Getty's appointment, recorded in the office of the County Recorder of this county.

Q. When you say Mr. Getty, do you mean Mr.—

A. Mr. J. Paul Getty.

Q. By whom and/or in what manner was Mr. George Franklin Getty II appointed?

A. The instrument of appointment of successors of trustee of record recorded in the office of the county recorder, Los Angeles County, California, provided for a succession of named trustees, and also provided that when George F. Getty II attained the age of 22 years he would become trustee, and makes provision for the appointment for the succession to the trusteeship as co-trustee, with any of the trustee or trustees then acting, of each of the sons of Mr. Getty when he attained the age of 21 years, other than George F. Getty II,

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

whose appointment as trustee was effective upon his attaining the age of 22 years.

Q. Who are the beneficiaries of that trust?

A. Mr. Getty—that is, Mr. J. Paul Getty—his sons, George Franklin Getty II, Jean Ronald Getty, Eugene Paul Getty, Gordon Peter Getty, Timothy Christopher Getty, and such other child or children who may be born to Mr. Getty: the lawful issue of any deceased child of Mr. Getty; the lawful issue of Mr. Getty, who may survive the [553] termination of the trust, and as a contingent and final vestee of the principal of the trust.

In the event that, at the time of the termination of the trust, Mr. J. Paul Getty is not then survived by lawful issue, the Museum Associates, a California non-profit corporation.

Q. I judge there is no possible reverter in that trust?

A. No possible reverter under any circumstances.

Q. Do you and George Franklin Getty II, as trustees under this trust, own any shares of the capital stock of the Pacific Western Oil Corporation?  
A. Yes.

Q. How many?           A. 699,422.

Q. If you know, does Mr. J. Paul Getty own any shares of the capital stock of that corporation?

A. Yes, he owns—may I be refreshed?

Q. Yes.

A. —499,021, that is, in his individual capacity, and as testamentary trustee under the last

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

will of his mother, Sarah C. Getty, deceased. I think that covers it.

Q. If you know, how many shares of capital stock did Pacific Western Oil Corporation have issued and outstanding?

A. Rather than speak from memory, I would prefer to be refreshed.

Q. Mr. Dockweiler, does this refresh your recollection: [554] that exclusive of shares in the treasury, the total outstanding stock of Pacific Western consists of 1,371,730 shares?

Mr. Boal: That is correct.

A. That is correct.

Q. (By Mr. Logan): Do the stockholders of Pacific Western Oil Corporation meet annually?

A. Yes.

Q. And at that annual meeting are its directors elected? A. Yes.

Q. When was the last time you had an annual meeting?

A. In April. I don't remember the exact date.

Mr. Boal: 17th:

The Witness: April 17th last.

Q. (By Mr. Logan): At that meeting was the stock owned by you and George Franklin Getty II voted for the election of the directors?

A. The stock now owned by me and George Franklin Getty II was voted by me as trustee by proxy. At that time the stock had not yet been transferred of record into the joint names of the

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

two present trustees, but stood in my name as trustee of the Sarah C. Getty trust, and when I refer to the Sarah C. Getty trust I mean the trust that was created originally by the declaration of December 31, 1934, to which you have already referred.

Q. As distinguished from the testamentary trust? [555]

A. As distinguished from the testamentary trust.

Q. Then the answer is that the stock was voted for the election of directors at that meeting?

A. That is correct.

Q. Was the stock owned by Mr. J. Paul Getty voted for the election of directors at that meeting?

A. I can't speak personally, but I understand that it was. I was not present at the meeting.

Mr. Sterry: The answers to the interrogatories which were proposed will show that the individual stock owned by him and his trustees was voted for him by proxy. That is my understanding.

The Witness: That is my understanding, too, from what I have heard.

Q. (By Mr. Logan): Will you please name the directors of Pacific Western Oil Corporation that were elected at the last stockholders' meeting?

A. I had better refresh my memory from the—

Mr. Boal: Do you want the minutes (handing document to the witness)?



Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

The Witness: Ruloff E. Cutten, R-u-l-o-f-f E. C-u-t-t-e-n; Lloyd S. Gilmour, G-i-l-m-o-u-r; Edward Groth, G-r-o-t-h; Frank A. Paget, and D. T. Staples.

Q. (By Mr. Logan): And that, I believe you said, was in April of this year?

A. April 17th of this year. [556]

Q. Is Mr. Cutten still a member of the board?

A. Yes.

Q. Is Mr. Gilmour still a member of the board?

A. I understand not, that he has resigned.

Q. If you know, who was elected to take his place?

A. I believe Mr. Fero Williams was elected on October 20, 1947.

Q. If you know, when did Mr. Gilmour resign?

A. That I don't know, but I believe prior to October 20, 1947.

Q. Is Mr. Groth still a member of the board?

A. He is still a member of the board.

Q. And Mr. Paget? A. Yes.

Q. And Mr. Staples? A. Yes.

Q. Please tell me who are the officers of Pacific Oil Corporation, and the office which each of them holds.

A. Do you have any objection to my refreshing my memory?

Q. No, sir, not at all.

A. Mr. D. T. Staples is president of the corporation. Mr. Emil Kluth is vice-president. Mr. Charles F. Krug, Jr., is secretary.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

If I slip up, you gentlemen correct me, because I am speaking from memory. [557]

Mr. Evans is a vice-president; Mr. Fero Williams is assistant treasurer and assistant secretary; and the treasurer is——

Mr. Hecht: I think Mr. Krug is secretary and treasurer.

The Witness: Secretary and treasurer?

Mr. Hecht: I believe so.

The Witness: That is my remembrance of it.

Q. (By Mr. Logan): In what manner are the officers or directors of Pacific Western Corporation elected or chosen?

A. By the board of directors.

Q. What is Mr. Staples' salary at present?

Mr. Hecht: \$22,500 a year.

The Witness: That is exclusive of any other compensation.

Mr. Hecht: That is his salary as president of Pacific Western.

Mr. Logan: Let me limit the question, then.

Q. What is Mr. Staples' salary at present as president of Pacific Western Oil Corporation?

A. \$22,500, as I understand.

Q. Does that figure represent any increase in the salary of Pacific Western Oil Corporation during the last twelve months?

A. It represents an increase, but I don't remember whether that increase is within the last twelve months. [558]

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. If you know, what is Mr. Kluth's salary as vice-president of Pacific Western?

A. That I don't know.

Q. Do you know the salaries of any of the other officers?

A. I do not. I don't remember. I might explain, I am neither an officer nor a director of Pacific Western.

Q. I understand.

You do own a majority of its stock, though, do you not, as trustee?

A. Yes; but the salaries, when I last saw the salary list, looked reasonable to me, and that was all I had to know, and I make no attempt to keep my memory charged with figures of that kind.

Q. When did you last look at the salaries, Mr. Dockweiler?

A. I probably was told of the salaries whenever there was a substantial raise made in any of the top officers. I may not have been. But, I think I last looked into the matter or last had the matter brought to my attention or gave it attention a number of months ago, in all probability prior to this April meeting of the board.

Q. Does each of the officers you have named devote his full time to the affairs of Pacific Western Oil Corporation?

A. Some time is devoted to the affairs of the Mission [559] Corporation by such of those officers who are also officers of Mission Corporation. Some

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

of those officers who are on the Board of Directors of the Skelly Oil Company devote time to the Skelly Oil Company. But, generally speaking, all of those men are full time officers and employees of Pacific Western Oil Corporation.

Q. To be a little more specific, then, Mr. Staples currently devotes a portion of his time to the affairs of Mission? A. That is true?

Q. And as to Mr. Kluth the same is true?

A. Yes.

Q. And as to Mr. Williams the same is true?

A. That is true.

Q. Are any of them directors of the Skelly Oil Corporation? You say Mr. Staples is.

A. Staples is now.

Q. Mr. Kluth?

A. Mr. Kluth and Mr. Williams and Mr. Evans.

Q. Outside of time devoted to the affairs of the corporation that you have mentioned, does Mr. Staples devote his time to any other business or occupation or profession?

A. The only occupation that I know that Mr. Staples himself has is his connection with and work for the Pacific Western Oil Corporation, Mission Corporation, and now [560] Skelly Oil Company.

Q. Is that true of the other officers generally?

A. Yes. As I say, they are full time officers and employees.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. Do any of the officers or directors of Pacific Western Corporation have any options or rights to purchase its stock?

A. Of Pacific Western, yes. There is an option plan involving a few shares of stock, comparatively speaking. I cannot give you the details of the plan offhand, but there is that plan. It does not involve very much money. I approved it when it was adopted, but that is a number of months ago.

Q. I hope you will pardon me a minute, Mr. Dockweiler because I have to refresh my memory.

Is it correct that under the date of December 21, 1946, Pacific Western offered to certain of its employees options to purchase between January 15th and February 1st, 1948, an aggregate of 4,477 shares of its capital stock at the price of \$20 per share, payment to be through authorized semi-monthly payroll deductions, and that pursuant to such offer Mr. Staples, Mr. Kluth and Mr. Williams indicated to Pacific Western that they might desire to purchase respectively 150 shares, 100 shares, and 93 shares?

A. Are you reading now from the proxy statement of Mission Corporation? [561]

Q. That is correct.

A. That's correct.

Mr. Boal: Will you note the page, Mr. Logan, you are reading from?

Mr. Logan: I did not read it literally, Mr. Boal.

The Witness: You gave me the substance of what is on that page.



Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Mr. Logan: I was getting my information from page 26 of the proxy statement.

Mr. Sterry: Counsel, we have been taking half an hour asking questions about which you know perfectly, and about which there is no dispute, all of which is set forth in the registration statements and the various documents that have been issued in connection with this merger, including the various proxy statements sent out.

Now, why on earth can't we stipulate, as far as my clients are concerned, that you can use and present to the court any facts in any of those documents, and they are true? What is the use of taking up a lot of time and running up tremendous expense to the parties asking questions about things that are perfectly a matter of record, and you know about it, and there cannot be any dispute about it?

Mr. Logan: All I can say is, Mr. Sterry, if we had stipulations on these matters I would not be asking these questions, but unless and until we have stipulations I am sure you will agree with me that I should be at liberty to [562] proceed with the case.

Mr. Sterry: I cannot stop you asking questions, but, as far as I am concerned, I am perfectly willing to stipulate that you may either put in evidence or use at any hearing the notice of meeting and the proxy statement of a special meeting of the Mission Corporation stockholders to be held December 6, 1947, and all the facts there that you have been inquiring about are there as a matter of record. There cannot be any dispute about them.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

I believe counsel for all other parties will join me in that.

Mr. Boal: Counsel for Mission Corporation has no objection to your offering the proxy statement in evidence in the Nevada action.

Mr. Summerfield: So stipulated.

Mr. Logan: Could we have some copies? We have only one.

Mr. Boal: We will get some copies.

Mr. Sterry: Do you see any objection to that, Mr. Farrand?

Mr. Farrand: The trustee George Getty sees no objection to its being offered. As to its contents, neither our client nor ourselves have any knowledge as to its accuracy or completeness.

Mr. Logan: Then you will not stipulate along the lines suggested, that whatever is contained in that statement [563] may be received in evidence as a fact in lieu of developing the fact in some other manner?

Mr. Hecht: Subject to its relevancy and materiality.

Mr. Logan: All right.

Mr. Farrand: Subject to its relevancy and its materiality and its competency, we have no objection to its being offered. As to its contents and as to a stipulation that it is true, we are not advised and did not prepare it, and cannot stipulate to it.

Mr. Logan: Very well, sir. I think that answers our situation.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Mr. Farrand: I think I saw it just the last two or three days, but it is a voluminous document, and we cannot stipulate to its being true or incorrect. We have no reason to doubt it, but we don't know about it.

Mr. Hecht: Mr. Farrand, can't you stipulate that it be taken as true in the action, without conceding the truth for any other purpose; matters of record, and books, and so forth?

Mr. Farrand: Your proposition now is what, Mr. Hecht?

Mr. Hecht: That you stipulate that it be taken as true in the action without admitting its truth or conceding its truth for any other purpose.

Mr. Farrand: We think that the deposition should develop in its orderly fashion. The contents of it we are not acquainted with. It would seem to me that [564] counsel certainly could find out, however, without all of this delay, what salaries were paid to people and who they are by some simpler device than asking a man who does not remember some of them and has to refer to records which are already here.

Q. (By Mr. Logan): Reverting back to the election of the directors of Pacific Western last April, Mr. Dockweiler, you voted your stock for the election of the directors that you have named?

A. By proxy, yes.

Q. You are, of course, familiar with the proposed plan of merger of Pacific Western into some other corporations?           A. Yes.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. If that merger becomes effective, if you know, what disposition is to be made of the shares of stock that you have been subscribed for or offered to be bought by Mr. Staples, Kluth and Williams, to which I just recently referred?

A. My understanding is that those who have subscribed for those shares are to be protected in them. In other words, it is my understanding they are to be permitted to pay up the purchase price, and those shares that they so have will be paid for in cash if they elect to take cash for them, at the same rate at which the shares of Mr. J. Paul Getty and the trustees will be paid for, \$68 a share.

Q. Do you know the purchase price to be paid by the [565] officers for that stock per share?

A. I think that is \$20. I think that was based upon the relationship to market price at the time the agreement was entered into in December of 1946.

Q. Have you and Mr. George Franklin Getty II, as trustees, and Mr. J. Paul Getty, individually and as trustee under the testamentary trust, entered into a written contract relative to the sale of all the stock that you own in Pacific Western Oil Corporation?      A. Yes.

Q. Do you have a copy of that agreement with you?      A. Not here, no.

Mr. Sterry: Can't we stipulate that marked copy has been attached to your answer at this point?

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Mr. Logan: May it be stipulated, gentlemen, that Exhibit "A" to the bills of complaint is a correct copy of that agreement?

Mr. Sterry: There is an amendment to that.

Mr. Logan: I am not asking you about the amendment now. I am perfectly willing to get into it. But, may it be stipulated that Exhibit "A" to each of the complaints is a correct copy of the original agreement?

Mr. Sterry: I will so stipulate.

Mr. Boal: Mission so stipulates.

Mr. Farrand: We will stipulate, subject to check. We haven't compared it. [566]

Mr. Dockweiler: I will stipulate.

Q. (By Mr. Logan): Does the first paragraph of that agreement, beginning with the words, "Whereas Sunray is," and so forth, correctly set forth stock ownership and total outstanding issued stock of the various corporations named in that paragraph?

Mr. Sterry: May I have that question, Miss Reporter?

(The question was read by the reporter.)

Mr. Farrand: We don't find any such recital in the place where the question was asked.

Mr. Logan: The paragraph begins with the language, "Whereas" the trustees and Getty are the owners and record holders of—and then there is a recital of ownership of shares and outstanding stock of Pacific Western, with Mission and Skelly Oil Company.



Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

The Witness: According to the best of my recollection, that so states the holdings and issuance of shares that are outstanding.

Q. (By Mr. Logan): Now, Mr. Dockweiler, I assume that when you negotiated that contract you deemed it to be your duty as trustee to get the best price you could get for the stock?

A. Certainly.

Q. And you did that?

A. I believe we did.

Q. Who first mentioned to you the possibility of [567] selling this stock to Sunray Oil Corporation? A. Mr. J. Paul Getty.

Q. When, please? Approximately; I know you can't recall the exact date.

A. To Sunray directly it would probably be some time in August.

Q. August, 1947, I take it?

A. August, 1947.

Q. Where was that suggestion made to you?

A. Oh, in a phone conversation I had with him. I was here.

Q. And where was he?

A. He may have been in Santa Monica; he may have been out of town, that is, in Tulsa.

Q. What did he say?

A. Well, just in general conversation he said—he mentioned the fact that a suggestion had been made that—or that Sunray would be willing to buy the stock for \$68 a share. I have no recollection of

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

the exact language used, because there had already been considerable discussion in preceding months on a deal at \$68 a share for the stock. However, that deal was not the deal that was ultimately expressed in the agreement of October 4, 1947.

Q. When did you next talk to anyone further about the matter?

A. I can't say when I next talked to anyone about that. [568] Because there were a number of conferences held with interested parties right down to the time that the agreement was executed in October. It wasn't one or two or three or four conversations. The matter was under rather general and constant discussion. I spoke to Mr. Getty, my co-trustee, on the subject of that proposed sale to Sunray.

Q. When did you do that?

A. Oh, a number of times. I would no more attempt to remember the precise dates—this was not a matter of one or two conversations, gentlemen; this was a matter that had been considered by myself and those interested, I think over a period of many weeks, and I am accustomed frequently to hearing from Mr. Getty, Sr., and I make no attempt to charge my mind with the content of each of those conversations, some short and some long. But, I spoke of the subject of this sale with Mr. George F. Getty, my co-trustee, I spoke of it to his counsel, Mr. George E. Farrand, I spoke of it to Mr. Lloyd Gilmour, to Mr. Petigrue of the firm representing

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Sunray—the law firm representing Sunray, Breed, Abbott & Morgan—I spoke of it to Mr. David Hecht and Mr. Norman Sterry and Mr. Henry Prince of Gibson, Dunn & Crutcher, representing Mr. Getty in the matter. In fact, there were many conversations on the subject.

Q. You say you speak to Mr. Gilmour about the transaction. [569] Did you speak to him more than once about it?

A. Yes. How many times I wouldn't be able to remember.

Q. But several times? A. Oh, yes.

Q. Without trying to remember any details of the conversation, can you indicate to me how much time you spent with Mr. Gilmour on this thing?

A. Well, with Mr. Gilmour personally, maybe it would total into some hours. That is about all I can say.

Q. And Mr. Petigrue.

A. Again, I would say a number of hours.

Q. On several different occasions?

A. Oh, yes. This is the aggregate, you understand, of the conferences.

Q. Yes. I understand. And, with Mr. J. Paul Getty, was the same true?

A. I think quite often. The time consumed, I think, would be considerable.

Q. And Mr. George Franklin Getty II?

A. Yes. Not as much. I think probably I had as much conversation with his counsel as I had with him personally.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. And Mr. Hecht, did you talk to him at considerable length about the matter?

A. Well, at how much length I don't know. I don't [570] think so. I had a number of conferences with him, but I believe they were comparatively brief until we were just about to the point of signing an agreement, and then I had a number of conferences with him.

Q. Mr. Hecht is the attorney or one of the attorneys for Mr. J. Paul Getty?

A. In this transaction he is representing him.

Q. Whom did Mr. Sterry represent?

A. Mr. Getty.

Q. And the same thing would be true of Mr. Prince, then?      A. Yes.

Q. Were you desirous of making the sale?

A. I thought it was of sufficient benefit to the trust to make it.

Q. Was Mr. J. Paul Getty desirous of making the sale?      A. He was.

Q. In addition to those that you have named, did you confer or consult with any other persons about this sale?

A. You are speaking about the sale directly to Sunray Oil Corporation?

Q. I am speaking now, Mr. Dockweiler, about the negotiations leading up to the execution of the contract of October 4, 1947.

A. Well, the only other person that I can recall with whom I have had any discussion on the subject

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

was Mr. E. A. Parkford. Now, possibly if some other person [571] would come to mind—Oh, Mr. Ross Fisher I believe I spoke to. I think I spoke to the two Mr. Farrands, Mr. George Farrand and his son, I think, in conversation in their office. I have spoken to the officers of Pacific Western.

Q. When?

A. Oh, a number of times. I would say many times.

Q. When?

A. Well, many times, beginning from the time that the proposition was made in August, right down to October 4th and beyond. That would be Mr. Staples, Mr. Kluth, Mr. Williams, and I think Mr. Evans.

Q. Is that all?

A. Prior to the signing of that contract, I think that would probably cover the list. I cannot say that it is exclusive of the possibility of one or more other persons to whom I may have spoken, because the matter was quite freely discussed.

Q. How much time would you estimate you devoted in discussing the matter with Mr. Staples?

A. Oh, I might mention I spoke about it to Mr. Skelly, this \$68 deal, and I spoke to Mr. Hyden.

Q. Now, how much time do you estimate you spent in discussing the matter with Mr. Staples?

A. That would be wholly impossible, and I don't want to make a guess; wholly impossible. I could say I spent [572] hours.



Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. Is that same thing true as to the other officers of Pacific Western?

A. It would be true as to Mr. Fero Williams, in a lesser degree with Mr. Kluth. The conferences, one or more, possibly, with Mr. Evans, would be very brief comparatively. He may have been present, you see, at conversations; maybe longer.

Q. Was that contract to which I have referred actually executed on the day it bears date?

A. It was. That was a Saturday.

Q. By all the parties to it on the same day?

A. All the parties to it, in Mr. George E. Farrand's office.

Q. Here in Los Angeles? A. Yes.

Q. Who drafted the contract?

A. When I say it was executed, Mr. Getty did not sign it in his (Mr. Farrand's) office. Mr. Getty had already signed it, and it was brought down to the office. Mr. Getty wasn't present.

Q. Which Mr. Getty, please?

A. Mr. J. Paul.

Q. If you know, who drew the contract?

A. Frankly, I don't know. It was presented to me for examination, and I found it satisfactory.

Q. Who presented it to you, Mr. Dockweiler?

A. Now, that I don't remember. I think it was probably either Mr. Hecht or Mr. Sterry. I don't remember.

Q. As I understand it, you had nothing to do with this contract until it was presented to you for signature?

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

A. Oh, the terms had been discussed, but the mechanical work of drafting the contract was immaterial to me, who was to do it; in fact, I would just as soon have somebody else do it. In other words, it didn't come to me as a surprise when I saw the contract.

Q. Its terms had been discussed before?

A. Its terms had been discussed.

Q. Who suggested the clause in the contract that the holders of shares of Pacific other than the trustees and Getty also be given an opportunity to sell their shares to Sunray at \$68 a share cash?

A. That was suggested by the trustees.

Q. You mean, yourself and Mr. Getty?

A. And Mr. Getty; and I believe also by Mr. J. Paul Getty. The three of us thought that should be in there.

Q. Why?

A. We were the controlling stockholders of Pacific Western by an overwhelming majority, and we felt that every Pacific Western stockholder, the remaining fourteen and a fraction per cent, should be given the same opportunities that we had to sell, and we thought we were [574] doing our duty to the immediate stock corporation in which we were holding stock in so requiring that payment to be made.

Q. Immediately before the "In Witness Whereof" clause of this contract. Mr. Dockweiler, there is a paragraph (d); it is 5(d).

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Without trying to quote it to you exactly, that envisions Sunray's obligation to purchase the Pacific shares on the fact that there would be no substantial adverse changes in the financial condition of Pacific, Mission, and Skelly?

A. That, of course, was one that Sunray insisted on putting in. It was immaterial to us whether it was put in or not.

Q. I assume it was likewise immaterial to you as to what might be the changes in the financial conditions of Sunray?

A. Yes; because they were purchasing it. In other words, these clauses that were put in were protective of them. We would have been satisfied with a direct agreement of Sunray to purchase from us without any conditions.

Q. If this contract of October 4th for the purchase of the stock is carried out and all of the stockholders of Pacific Western should tender their stock for cash, there will be required a cash outlay of somewhat over [575] \$93,000,000, will there not?

A. That is correct.

Q. During the negotiations that led up to the execution of this contract, did you have any discussion with anyone as to how that cash was to be raised?

A. When you speak about discussion, that is one thing; when you speak about being told or informed, or learning or hearing, the possibility is I was, yes. I think Mr. Lloyd Gilmour, Mr. Hecht, may have

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

spoken of the subject to me. Those details I frankly don't remember, but there was discussion or explanation as to how this money would be raised.

Q. I take it that you know that at the time you executed this contract Sunray did not have ninety-three odd million dollars in its treasury?

A. Well, frankly, I assumed it had not. That would be quite a large current position.

Q. Were you at all interested in whether or not Sunray might be able to raise the amount of money to carry out the contract?

A. If they couldn't raise the amount of money, if they couldn't carry out the contract, I certainly was interested.

Q. Did you endeavor to learn how they proposed to do it?

A. Well, I was told in a general way how it was proposed to be done, and as long as we were satisfied that there was a prospect of the money being raised, I thought it was sufficient reason for entering into the contract. If there had been no prospect of the money being raised, why, obviously, I would not have entered into the contract.

Q. What did you understand to be the method by which the money was to be raised?

A. Borrowings, capital issues.

Q. Is that all?

A. Sale of Tide Water stock.

Q. Owned by what companies?

A. The Tide Water stock would become the property of Sunray after the merger had been

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

effected. It might have involved borrowing prior to the actual sale of the Tide Water stock being consummated. It might have called for at least a contractual arrangement.

Q. Yes; but by whom is that stock presently owned?

A. That stock is presently owned by Pacific Western Oil Corporation and by Mission Corporation.

Q. Did you understand it to be a part of the arrangement that there would be a merger of corporations involved so that the cash could be raised?

A. Well, I understood that it would have been impossible to have gone through with the deal unless there were a merger. Yes, it is mentioned right in our agreement. [577]

Q. Mr. Dockweiler, after the execution of this contract of October 4th, did you leave Los Angeles?

A. Yes. I went down to Tulsa, and arrived there on the 11th.

Q. Did you go directly from here to Tulsa?

A. Yes.

Q. About what time did you leave?

A. Oh, I left here—I think it was Thursday, the 9th, on the Grand Canyon Limited. I got into Tulsa Saturday afternoon on the 11th.

Q. Did anyone go with you? A. No.

Q. You went by yourself? A. Yes.

Q. Who did go with you, Mr Dockweiler?

A. Nobody except myself. In other words, I went alone.



Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. I notice, of course, that the contract mentions a merger of four companies. Was it later decided to eliminate one of them and proceed with a three-company merger?      A. Yes.

Q. Can you tell me approximately when that decision was made?

A. I think that was Monday, the 13th of October, in the afternoon.

Q. Can you tell me who made that decision?

A. Sunray.

Q. Was a merger agreement among Sunray, Pacific Western and Mission prepared or drafted?

A. At that time?

Q. At any time.      A. Oh, yes.

Q. Do you know who prepared or drafted it?

A. Frankly, I don't. I assume that it was drafted by Sunray's counsel in collaboration with Pacific Western's counsel and Mr. Hecht.

Q. You don't know the date?

A. The date on which that agreement between the three companies was drafted?

Q. It would be subsequent to October 13th, wouldn't it?

A. Subsequent to October 13th. It might have been started that very day, by elimination of the provisions of the agreement that had been prepared for the merger of the four companies, that is, including the Skelly Oil Company, and it would have been a comparatively simple thing to have taken and rewritten an already prepared agreement.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. Then there had been prepared an agreement for the merger of the four companies?

A. That's true.

Q. When?

A. I don't know; but it had been prepared apparently before I ever got down to Tulsa. [579]

Q. Had it not in fact been prepared before you executed your contract of October 4th?

A. That is possible, because the contract was merely the culmination and the final affirmation of agreements that had theretofore been arrived at.

Mr. Logan: Now I will address a question to all counsel here representing the defendants.

May it be stipulated that Exhibit "B" to the complaint in the California case and Exhibit "B" to the complaint in the Nevada case is a correct copy of the agreement of merger of Sunray, Pacific Western and Mission?

Mr. Boal: Mission will so stipulate in the Nevada action, subject to check as to the actual exhibit.

Mr. Logan: I think you will find it is a photolith copy.

Mr. Farrand: In reply to your question the trustee, George Getty, is not a party to it. It is attached to a sworn exhibit, and we do not doubt its authenticity, but we will stipulate to it only subject to checking it and seeing the original document itself, which I think I am correct in saying that neither our client nor ourselves have ever seen. I know of no reason to doubt it, but in that degree

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

of caution which I think we ought to exhibit we stipulate to it subject to check, and if it becomes important we can get the original and read it.

Mr. Logan: That is quite satisfactory. [580]

Mr. Sterry: We will make the same stipulation, that is, that it is correct subject to check.

Of course, our stipulation is only as to the exhibit attached in the California complaint.

Q. (By Mr. Logan): Mr. Dockweiler, you are a director of Mission Corporation, are you not?

A. Yes.

Q. Will you please tell me the names of the other directors?

A. Mr. Arthur M. Boal, Mr. Fero Williams, Mr. Emil Kluth, Mr. William G. Skelly, Mr. Arch H. Hyden, Mr. D. T. Staples, and myself.

Q. Was B. I. Graves formerly a director of Mission?      A. He was.

Q. Do you know on what date he resigned?

A. Some time prior to the meeting of October 18, 1947, of the board of directors of the corporation.

Q. Did you suggest to him that his resignation would be acceptable?

A. That it would be acceptable?

Q. Yes.      A. I did.

Q. When did you do that, please?

A. When he phoned me that he was resigning.

Q. When was that?

A. When I was in Tulsa. [581]

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. About the 13th of October?

A. No; I think that was about the middle of the week.

Q. Of the 13th?           A. Yes.

Q. I am just trying to get an approximate date.

A. It was between the 13th of October and the 18th of October. He phoned me that he had resigned, that he was not going to be at the meeting.

Q. Prior to October 18, 1947, did you discuss the merger agreement, Exhibit "B", with any of Mission's directors?

A. Yes; I discussed it with Mr. Kluth, Mr. Williams, Mr. Boal, Mr. Staples, who became a director at the meeting of October 18, and I personally had gone through the original draft; that is, the draft for the four-company merger.

Q. When did you first go through the draft for the three-company merger?

A. Well, I eliminated items that pertained to the Skelly Oil Company on that. I discussed the merger.

Q. Mr. Dockweiler, wait a minute, please.

A. The merger agreement.

Q. Wait a minute. Will you please tell me when you first read the document that is now attached to these complaints as Exhibit "B"?

A. Frankly, I don't know. [582]

Mr. Hecht: The document or draft?

The Witness: The draft—I don't think I have ever seen it except at the meeting, the original,

## Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

that is, the final draft that was signed, but I assumed that that draft was similar to the draft that I think I saw two or three days before the meeting. I assume that there had been no substantial change in the printed draft that I had at that time.

Q. (By Mr. Logan): Then let me put it this way: The first time you saw a draft of the three-company merger was two or three days before the meeting?

A. It may have been not two or three days. It may have been a day or so before the meeting. After the change had been made, I think I saw a draft of that a day before the meeting at the Tulsa Hotel—at the Mayo Hotel in Tulsa.

Q. When did you discuss it with Mr. Boal?

A. On the 17th.

Q. And Mr. Williams?

A. Mr. Williams, that particular draft?

Q. Yes, sir.

A. I had already discussed the other agreement with him, and when it came to this three-party—that is, the three-corporation merger, I think we both had it pretty well in mind, and it was a very simple thing.

I never discussed this particular form of three-party agreement, because we just assumed the eliminations in our [583] discussions. We had been discussing this merger for 41 days before, and the elimination of the Skelly Oil Company greatly simplified the picture.



Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. When did you discuss it with Mr. Staples?

A. Days before; right down to the time that he arrived in Tulsa, before the meeting. But I had already discussed the matter with him days before.

Q. You are talking now that you had discussed with him the original agreement?

A. That is the four-corporation agreement?

Q. Yes.

A. But with the elimination—the elimination of the Skelly Oil Company. It was just eliminating the further problems from the agreement. There was no difficulty in that.

Q. Now, then, I will ask you something about the original agreement. Who prepared it?

A. I don't know. I didn't see it until it was prepared.

Q. When did you first see it?

A. Well, if you mean by a draft of the original, a draft of it, that is, a copy of it——

Q. All right.

A. Because, as I said, the one that was signed I didn't see until the day of the meeting; but a printed copy of it I think I saw the day before the meeting. [584]

Q. The day before the meeting? A. Yes.

Mr. Hecht: When you say "original," do you mean the original?

A. Not of the four-party agreement, no. I thought he meant the original of the three-party agreement. That particular document, that parti-

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

cular aggregation of pages, printed, I don't think I saw until the day of the meeting, but the printed draft, which was the same, coming from the same type, presumably, I think I saw the day before the meeting.

Q. (By Mr. Logan): Now, I want to make myself clear, and I want to just leave the three-company contract. I want to get clear away from it now and talk about the four-company merger agreement that you have mentioned as having existed. That is the one between Pacific Western, the Mission, Skelly, and Sunray.

When did you first see a draft of that document?

A. In Los Angeles, before I left for Tulsa.

Q. That was on October 5th—no, it was later than that.

A. I left for Los Angeles on October 9th, because I took a copy of that printed draft with me.

Mr. Sterry: I understood you to say that you left for Los Angeles.

The Witness: I mean I left Los Angeles for Tulsa on October 9th. [585]

Q. (By Mr. Logan): Prior to the meeting of directors of the Mission on October 18, 1947, did you furnish to them any copies of the three-company merger agreement?

Mr. Sterry: May I have that question read?

(The reporter read the question.)

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. (By Mr. Logan): If you know, did anyone else furnish them copies of that agreement before the October 18th meeting?

A. Yes; I assume that was done to certain of the directors because I saw copies around.

Q. To which of the directors was it so furnished?

A. Frankly, I don't know. As I say I saw copies at one or more of our conferences or gatherings.

Q. Who did you see with copies?

A. Well, I couldn't tell you that, because we had conferences on the 17th; Mr. Boal, Mr. Staples, Mr. Williams each probably had a copy and we had a lot of papers, and who received a particular paper and from whom the particular paper was received I wouldn't be able to tell you.

Q. Very well.

A. We were just in conference or talking.

Q. Was this three-company merger agreement submitted to counsel for Mission? A. It was.

Q. When? A. I think on the 17th. [586]

Q. Did I understand you to say, Mr. Dockweiler, that the Agreement of October 4, 1947, between you and Mr. Getty, as trustees, and Mr. J. Paul Getty, individually as trustee, and Sunray, had been amended?

A. I didn't say that, but I can tell you that it was amended.

Q. Can you tell me when?

A. I don't remember the date. I signed the original counterparts of it—it must have been subse-

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

quent to the determination that the Skelly Oil Company would not be a part of the merger.

Q. Of course I have no subpoena duces tecum for you, but are you willing to furnish a copy of the amended agreement ?

A. I have no objection to a copy being furnished. I haven't a copy myself, so I have no objection to a copy being furnished.

Mr. Sterry: We will furnish you a copy. I don't know if we can do it before Monday, because our office closes at noon.

Mr. Logan: That will be quite satisfactory. Thank you.

The Witness: But I can say that it was satisfactory in form to me, or else I would never have signed it, even though I haven't a copy in my possession now.

Q. (By Mr. Logan): Do you know how many shares of [587] Tide Water stock Pacific Western owns?

A. I will have to be refreshed. I wouldn't attempt to remember those long figures, gentlemen.

Q. I understand that.

Mr. Sterry: It is all set forth in the Mission Corporation proxy statement.

A. 577,854.

Q. (By Mr. Logan): Do you know how many shares of Tide Water stock Mission owns?

A. 1,341,493 shares.

Mr. Boal: That is not quite right.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

The Witness: Is it a little more? No; I will withdraw my answer.

Mr. Boal: Here it is. That is right. (Mr. Boal refers to document.)

A. 1,345,593 shares.

Q. (By Mr. Logan): During the negotiations leading up to the execution of the contract of October 4, was there any discussion with you concerning the sale of that Tide Water stock owned by Pacific Western and Mission?

Mr. Sterry: May I have the question, please?

(The reporter read the question.)

A. Yes. The discussion was to the effect—I think I have already testified—that Sunray Oil Corporation, if the merger went through, would sell the Tide Water stock that it would receive on that merger from Pacific Western and [588] Mission Corporation.

Mr. Sterry: Counsel, I might suggest that it might save a lot of reporter's notes and time if we took some simple designation for your October contract, that is, the contract of October 4. Every time you repeat it. Can't we give a short designation to it and maybe call it the Getty contract?

Mr. Logan: Well, we can call it the contract of October 4. That would suit me.

Mr. Sterry: All right.

Q. (By Mr. Logan): Do you know that Sunray now has outstanding debentures and a note in the total principal of \$29,000,000?



Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

A. Whatever the statement shows, that is correct.

Q. Do you know that if this merger becomes effective that Sunray must refund or refinance that obligation? A. I assume it must.

Q. Do you know whether it must or not?

A. Well, I assume it must, from the terms of the debentures. They have been explained to me.

Q. When did you have those terms explained to you?

A. That would be pretty hard to say. I guessed it may have been before the contract of October 4 was ever signed, or later.

Q. Did you understand, or was it your information, that if such merger was made that there be a premium or [589] penalty to be paid of \$750,000?

A. Somewhere along the line I was advised that.

Q. Do you remember when? A. No.

Q. Was it before or after the directors' meeting of October 18? A. Before.

Q. Are any commissions payable in connection with the agreement of October 24?

Mr. Boal: I will object to that question. Do you want to put it all in one question? They are all set forth in the statement.

Mr. Logan: I quite agree with you on that, that it would shorten me up a lot.

The Witness: What is your question? I can answer that right off.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Mr. Logan: I think I might just as well proceed.

Mr. Sterry: Your statement is, I think, not quite clear. It would lead my mind—the question, as I heard it, indicated was there any commissions due in regard to this sales agreement of October 4, 1947. What I am thinking, you are asking for the commission to be paid——

Mr. Logan: Let me try to rephrase the question.

Q. Now, I will use a little broad language, if I can.

In connection with the agreement of October 4, 1947, and the merger of the three companies, are any commissions [590] to be paid to Eastman, Dillon & Company?

A. The compensation of Eastman, Dillon & Company is set forth in the proxy statement of the Mission Corporation in detail, and I would be happy to read from that, because I frankly don't remember the figures as they are set forth.

I can say this: there are no commissions, compensation, fees of any kind, payable by the trustees of the trust, and so far as I know, by Mr. J. Paul Getty for making this sale.

The sale, as it were, is net to us.

Q. There are commissions payable to Mr. Parkford, are there not, in the event that the Tide Water stock is sold?

A. That is stated in the proxy statement.

Q. I am going to try to get around to letting you incorporate that in your answer, if I can.

A. That is correct. That is my understanding.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. And the details pertaining to those commissions as contained in the Mission Corporation proxy statement are correct?

A. My understanding is that those details are correct.

Q. Of course, you don't know anything about commissions that Sunray might be obligated to pay in connection with the merger, except those that have been disclosed and stated in the Mission statement?

A. That is true, because I only know what has been disclosed to us. I assume, however, that that is [591] complete.

Mr. Hecht: According to the S. E. C. it is not.

The Witness: Incidentally, that is the basis of my assumption, among other things.

Q. (By Mr. Logan): Do you know the amount of underwriters' fees and discount that may be payable in connection with the sale of debentures and preferred stock to be issued by the surviving corporation, if the merger becomes effective?

A. Only as those figures that are again incorporated in the proxy statement of the Mission Corporation.

Q. So far as your knowledge is concerned, the statements in the proxy statement on that matter are correct?      A. That is true.

Q. The proxy statement also contains an itemization of the estimated cost of the merger, does it not, Mr. Dockweiler?      A. It does.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. Do you affirm that that estimate, so far as you know, is an accurate one?

A. To the best of my knowledge, that is accurate.

Q. Then we won't have to go into detail on that.

The proxy statement also contains a statement that the gross proceeds of the Tide Water stock sale will be \$48,086,175, and that after a reserve for taxes the net proceeds will be \$39,870,770.

Mr. Boal: What page are you looking at? [592]

Mr. Logan: Two different pages; page 5, \$48,086,175, and on page 6, in the first full paragraph, it has the second figure. Do you find it?

Mr. Boal: I have it. Those figures cover both Mission and Pacific Western shares?

Mr. Logan: Let me start the question again, because we were interrupted somewhat in the middle of it.

Q. The Mission proxy statement shows that the Tide Water stock now owned by Pacific and Mission is to be sold for an aggregate of \$48,086,175?

A. That is at the rate of \$25 per share.

Q. At the rate of \$25 per share, which will provide \$39,870,770 after reserve for income taxes. Is that a correct statement?

A. To the best of my understanding, it is.

Q. The Mission Corporation proxy statement contains, does it not, balance sheets, profit and loss statements, and similar data concerning the three companies to the merger?

A. That is correct.

Q. As of December 31, 1946?

A. Yes.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. Are those correct statements?

A. I couldn't say that those statements are correct. I must assume that they are correct. I am no accountant. I am no accountant for either one of the three companies. [593] I assume that they are correct or else they wouldn't have been furnished the Mission Corporation.

Q. Is the Mission Corporation statement included in that a correct copy of the actual balance sheets, profit and loss statements, and accompanying papers that form the books of the Mission Corporation's records?

A. To the best of my knowledge.

Q. Is the same thing true as to the balance sheets and financial statements as of Pacific Western?

A. To the best of my knowledge.

Q. What about Sunray?

A. Well, you see, I haven't very much contact with Sunray, and as a consequence I wouldn't be able to say, to speak of Sunray's financial statements in the same way that I would be able to speak of Mission's financial statements or Pacific Western's financial statements. I must, in the case of Sunray, assume that they have furnished Mission Corporation with a correct statement, and it is printed in the Mission proxy statement on that assumption.

Q. Have you ever made any calculation as to the total assets of these three merging corporations, as shown by their balance sheets of December 31, 1946?



Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

A. I may have heard the figure. I wouldn't remember it. I have not attempted to work out the figure in detail, as I am no accountant. The financial items that would be involved there are a matter of calculation. [594]

Q. I should like to ask you now, Mr. Dockweiler, a few questions concerning the members of the Mission board of directors.

Mr. Arthur M. Boal is an attorney, is he not?

A. He is a prominent New York Attorney.

Q. Has he from time to time in the past represented Mission Corporation in legal matters?

A. He has acted for the Mission Corporation, yes.

Q. Has he from time to time in the past acted as counsel for the Pacific Western Oil Corporation?

A. I think so.

Mr. Sterry: What was the answer, Mr. Reporter?

(The reporter read the answer.)

A. (Continuing) In fact, I know he has acted for Pacific Western in times past.

Q. (By Mr. Logan): Pacific Western has held directors' meetings in his office, has it not?

A. Yes. So I know he has. When I say I think, I mean I know that was the case.

Q. As late as 1946 was Mr. Boal a vice-president of Pacific Western? A. Yes.

Q. Do you know when he resigned?

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

A. No, I don't know the precise date. May I be refreshed a moment?

Arthur, when did you resign as vice-president of P. W.? [595]

Mr. Boal: I don't remember the date. It was probably in January of this year.

A. (Continuing) Well, probably in January of this year.

Q. (By Mr. Logan): Wait a minute. Maybe I can refresh your recollection. Would it be February 26, 1947? A. It might well be.

Q. Would you care to look at that document (handing document to the witness)?

A. Yes; he resigned as vice-president and as treasurer, and that resignation was accepted at the meeting of February 26, 1947, of the board of directors' meeting of the Pacific Western Oil Corporation.

Q. Do you and/or your firm act as counsel for Mission Corporation from time to time?

A. We have never acted as counsel for Mission Corporation.

Q. How about the Pacific Western Oil Corporation? A. Yes.

Q. Over a period of approximately how long?

A. Pacific Western since the early thirties.

Q. Mr. Dockweiler, I wish to invite your attention to a statement on page 27 of the Mission Corporation proxy statement, concerning Mr. Staples and some others being associated with the merged

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

corporation at substantially their present salaries, and the statement that Mr. Staples' [596] present salary from the Pacific and Mission is \$27,500, and also the statement of others.

Do you have that statement?           A. Yes.

Q. Is that statement a fact?

A. To the best of my knowledge.

Mr. Farrand: You point at it and say is that right.

Mr. Logan: Very well. Wait a moment. We can straighten it out.

Mr. Farrand: I don't think the reporter can tell you now unless you point at it.

Mr. Logan: The statement to which I have referred appears on page 27 of the Mission proxy statement, and is as follows:

“David T. Staples, president and a director of both Pacific and Mission, Emil Kluth, vice-president of Pacific and a director of Mission, Fero Williams, treasurer and a director of Pacific and a director of Mission, O. M. Evans, vice-president of Pacific, and Charles F. Krug, secretary of Pacific, are expected to be associated with Sunray as employees at substantially their present salaries. Mr. Staples' present aggregate salary from Pacific and Mission is \$27,500. The salary of none of the others is in excess of \$15,000.”

A. That is my understanding.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. Now, do you know, Mr. Dockweiler, when the [597] arrangement was made for those gentlemen last named to enter the employment of the surviving corporation at their present salaries?

Mr. Hecht: I will object to the question, as to its form. You haven't asked whether an arrangement was made. It doesn't necessarily imply an arrangement was made.

Mr. Logan: Very well. I will yield to your objection.

Q. Do you know when that expectation arose?

A. I can't say personally, because many things have been discussed in the meantime, but I can say this, that before—some time before I signed any agreement as trustee on October 4, 1947, I personally had a conference with Mr. Clarence Wright, in which I insisted with him that if the trustees and Mr. J. Paul Getty were to enter into any agreement to sell to Sunray, the heads of our departments and our top men in Pacific Western would have to be taken care of and taken over by the new company, without detriment to them, to which Mr. Wright agreed.

Q. The statement in the proxy statement says: "at substantially the same salaries."

Do you recall or do you know whether there was to be an increase or decrease, or were the salaries to remain the same?

A. That I don't know; but what I insisted upon was that they would not in any manner be injured by being taken over. [598]

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. Very well. Does Pacific Western Oil Corporation hold any leases wherein the State of California is lessor?

A. Yes, two. That is, it holds a lease and is contractor on another lease.

Q. Does either of them cover tidelands?

A. They cover lands from, I think, the mean low water mark out in the Pacific Ocean at Elwood, California; State leases No. 92 and No. 93.

Q. What is the term of those leases, that is, their duration?

A. I wouldn't remember precisely. My recollection is that they were 20-year terms when originally issued.

Q. Can you recall approximately the date they were issued?

A. No, I couldn't. I would have to refresh my memory. My recollection is that they have some years yet to run, but under our law there is a preferential right given to the holder of the lease to renew.

Q. Yes, I understand. Is oil being produced in those properties?      A. So I understand.

Q. Do you know how many wells there are on them?      A. No. Quite a number, though.

Q. Do you know what the daily production of those wells is, approximately?

A. No, I would have to refresh my memory. I would [599] have to refresh my understanding of that by looking at the production sheets.



Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. I wonder if you would be good enough to do that, and furnish me with that information, please?

A. I can probably find that out, but probably not until Monday.

Q. Very well.

Mr. Logan: Gentlemen, may it be stipulated that the board of directors of the Mission Corporation has issued a call, or a notice of a special meeting of its stockholders for December 6, 1947, and, among other things, to consider and vote upon an agreement of merger dated October 18, 1947, providing for the merger of Mission, and Pacific Western Oil Corporation, a Delaware Corporation, with and into Sunray Oil Company, a Delaware corporation?

Mr. Sterry: So stipulated.

Mr. Boal: Mission so stipulates. It is set forth on the proxy statement.

Mr. Farrand: We will stipulate on behalf of George Franklin Getty II as trustee, subject to check. We are not a director or counsel for the corporation, and obviously we will do so to be helpful and not because we know; therefore, we reserve the right to check it and see; if it becomes material to deny it.

Q. (By Mr. Logan): At that meeting does Pacific Western Oil Corporation intend to vote its Mission stock in favor of [600] merger?

A. I assume so.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Q. Is this statement on page 27 of the notice of meeting and proxy statement of the Mission Corporation correct:

“Mission is advised that it is the present intention of the management of Pacific to vote the 641,808 shares (approximately 47 per cent) of the Capital Stock of Mission, held by Pacific, in favor of the adoption of the agreement of merger”?

Is Mission Corporation soliciting proxies for that stockholders' meeting?

A. Yes, as shown by the proxy statement.

Q. Has the board of directors of Pacific Western Oil Corporation approved this merger agreement?

A. So I am advised. I wasn't present at the board meeting. I am neither an officer nor director, but I am told that it has been approved.

Q. Has a meeting of the stockholders of Pacific Western Oil Corporation been called to consider and vote upon the adoption of the merger agreement?

A. So I understand.

Q. For what date, if you know?

A. For December 6—the 5th, in Delaware.

Q. How are you and George F. Getty going to vote your stock at that meeting? [601]

A. At that meeting?

Q. Yes, sir.

A. I assume we will vote that stock, and I can only speak for myself, because Mr. Getty is here

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

to speak for himself. I am in favor of voting that stock and in favor of the merger.

Q. Were you formerly a director of the Tide Water Associated Oil Company?      A. Yes.

Q. For approximately how long were you interested?      A. About five years.

Q. Did you resign?      A. I did.

Q. When?      A. August 1, 1947.

Q. Do you care to state your reason for resigning?

A. Personal. If you want to really know, I have no objection to telling you. The Department of Justice felt that there was a violation—they expressed to me that they considered there was a violation of the Clayton Act if I remained on the board, and I disagreed with them, and expressed my disagreement to them, but, having no particular desire to enter into a controversy with the Department of Justice, I resigned.

Mr. Hecht: Do you care to ask him which corporation, so we might have the record clear?

Mr. Logan: Just one moment and I will be with you.

Mr. Hecht: I don't want to interfere with your line of questioning, but I think it might clarify the answer, and I make the suggestion that you again ask him between which corporations there would be a conflict, as suggested by the Department of Justice.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

The Witness: Between the Tide Water Associated Oil Company and the Skelly Oil Company; that is, they alleged that there was competition within the meaning of the Act between the two companies.

Q. (By Mr. Logan): Will you tell me, please, who suggested the terms of October 4 contract?

A. I think those terms were worked out between us in the course of conferences. I don't know who made any particular suggestion. I think we all did some suggesting on the subject in arriving at what should be in the contract, and then the drafting of the contract was left to one or more of them in final form, and it came to me with suggestions all written in.

Q. Then, as we would say, in Oklahoma, you just horse traded around and came out with this contract?

A. I think that would be a correct expression.

Mr. Logan: I believe that is all we have.

I do have one more question I would like to ask you, Mr. Dockweiler. Are you willing to furnish us with a statement showing, as to the officers of the Pacific Western [603] Corporation, the salary that each of them drew as of January 1, 1946, and the date and amount of any subsequent changes?

A. Yes. Now, will you specify your officers?

Q. Your president, Mr. Staples; vice-president, Mr. Emil Kluth; and treasurer, Mr. Fero Williams.

A. Yes.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Q. And Mr. O. M. Evans, a vice-president of Pacific and Mr. Krug, a secretary of Pacific.

A. All right.

Q. Will you also be good enough to furnish me with a statement of the salaries on January 1, 1946, the date of changes and the amount to which changed, for the following officers of Pacific—

Mr. Hecht: Why not make it all the officers? I think it would be easier.

Mr. Logan: I think it would be.

The Witness: There is no objection to that.

Mr. Logan: Without reference as to who may have been the encumbent at that particular time.

The Witness: All right.

Mr. Logan: And Mission also?

The Witness: Yes.

Q. Mr. Dockweiler, may I ask you another question: if any of the people named in the proxy statement here on page 27— Do you want those named? [604]

A. No.

Q. Any of those people were in the employ of either of these companies and drawing a salary, even not as officers, and, if so, will you tell me their salaries, please? A. Yes.

Q. And the changes over that same period of time? A. What page of that proxy?

Q. Page 27. There are several page 27s, Mr. Dockweiler, but the first page 27.

Mr. Boal: The others are exhibits. It is of the statement.



Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of Thomas A. J. Dockweiler.)

Mr. Logan: That is right. We have no further questions.

Mr. Sterry: No questions.

Mr. Boal: No questions.

Mr. Farrand: No questions.

Mr. Logan: It is so near 12 o'clock that I believe it would be inconvenient to start the examination of another witness at this time. We should like to adjourn the taking of the depositions until after lunch.

Would 1:30 be convenient for you gentlemen?

Mr. Sterry: How about one o'clock?

(Discussion off the record.)

Mr. Sterry: You gentlemen also gave a notice to Mr. J. Paul Getty to take his deposition at this time. At [605] the time you gave the notice, I believe it was ineffective, because no service had been made on him. I took the matter up afterwards. You did attempt a service, which I am waiving any question as to whether it was good or not, but, needless to say, Mr. Getty authorized us to appear for him. I took the question up with Mr. Wright, and he advised me that we would arrange, when you gentlemen arrived here, for the taking of Mr. Getty's deposition in Oklahoma, and that he need not appear here today.

Now, I have understood from him that you are not yet in a position to make an agreement because you don't know whether you will be able to take his deposition before the hearing; is that correct?

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Mr. Reinhart: I would like to make a statement. No definite subpoena was issued with an attempt to be served prior to the issuance of the summons in the California case. The summons was, first, not only attempted to be served, but was served upon him in his residence in California.

Mr. Hecht: I am not raising any question about it, but Mr. Getty is in Oklahoma and is willing to give his deposition any time you want.

Mr. Sterry: My understanding was the other way, that I need not apply to the court on any motion, but that we make an agreement about that.

Mr. Logan: I can go with you, Mr. Sterry; that may settle it. So far as we are concerned, we will not make [606] any issue or motion, or raise any question as to whether or not Mr. J. Paul Getty should be in attendance on these depositions today.

Mr. Sterry: We will agree with you that if you find it necessary to take his deposition, we will agree with you any time at your convenience.

Mr. Hecht: Except that we want 24 hours' notice.

Mr. Reinhart: Will Mr. J. Paul Getty be present at the trial of the California case?

Mr. Sterry: Now you are asking something. I don't believe that there is going to be any trial. I will be very much surprised if you survive a motion; and, if you do, when it is set for trial, it is highly problematical, and I wouldn't indulge in matters of conjecture and speculation, but if there is a date

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

set for the trial, I think I can say that he will either be here or you will have ample opportunity to take his deposition.

Mr. Rinehart: Will he be available for the temporary injunction hearing in California now set for November 24, 1947, at 10 a.m.?

Mr. Hecht: He is not inclined to be here. He is busy in Tulsa, Oklahoma. He is president of the Spartan Aircraft Company, and he states that it is a matter of great importance to him to attend to business with that company, but that he is perfectly willing at any time to give his deposition in Oklahoma, but he is not planning on [607] coming to California at this time. He is the president of the Spartan Aircraft Company, and at the same time it is in the throes of making new arrangements, and it is vital business of that company, and he can't take the time off to come to California. He doesn't fly, and it would require a trip by train, and it would be detrimental to the affairs of the Spartan Aircraft Company; so he suggests that you take his deposition in Oklahoma. The plaintiff resides there, and a majority of your counsel reside there.

Mr. Logan: We are not ready to announce a decision at this time.

Mr. Sterry: I would like to have it a matter of record, because it was informal discussion, and we will leave it that way, and you decide when you want to take the deposition and we will be glad to stipulate with you on reasonable notice.

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of Thomas A. J. Dockweiler.)

Mr. Rinehart: I don't see how it would be possible to get any deposition at all before the hearing of the two cases here. For the purpose of the record, as Mr. Hecht has stated his position, there are a great many more people interested and involved in this matter than there is in the Spartan Aircraft Company, and we are sorry that he wasn't here today.

Mr. Logan: Let us take a recess at this time until 1:30 [608]

(Whereupon, at 12:05 o'clock p.m., further proceedings in the matter of the taking of depositions was adjourned until 1:30 o'clock p.m. of the same day, at the same place.)

/s/ THOMAS A. J. DOCKWEILER,  
Witness. [609]

GEORGE FRANKLIN GETTY II

called as a witness on behalf of the plaintiff herein, having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Logan:

Q. Please state your name.

A. George Franklin Getty II.

Q. Where do you live?

A. 2355 Adair Street, San Marino, California.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of George Franklin Getty II.)

Q. Are you one of the trustees under a declaration of trust executed by Sarah C. Getty on the date of December 31, 1934, by Mr. Getty?

A. I am.

Q. Without going into the details of it, you and Mr. Dockweiler, as such trustees, own certain shares of stock in Pacific Western Oil Corporation, do you not? A. That is right.

Q. Will you please tell me when it was first suggested to you that that stock be sold for cash?

A. Is there any particular deal in mind?

Q. Well, we will say to Sunray Oil Corporation.

A. I would say about the middle of August of this year.

Q. Who mentioned that to you, please? [610]

A. I think it was mentioned to me by my counsel through contacting Mr. Dockweiler.

Q. When did you next confer or consult with anyone concerning the proposed sale?

A. Well, in August or prior to August, why, there had been quite a few irons in the fire in connection with selling the stock to other organizations, other people, and more or less as one fell by the wayside another took its place, and the Sunray deal was just another deal that had come along, and with that, why, I don't think that any new people were talked to—Mr. Dockweiler and my father, my attorneys, naturally, a little later to Mr. Skelly—in fact, any source that could give me any information whatsoever as to whether a cash sale was advisable or whether to stay in the oil business was advisable.



## Plaintiff's Exhibit No. 3—(Continued)

(Deposition of George Franklin Getty II.)

Q. I take it from what you said that for some time prior to August of this year the question of selling the Pacific Western stock for cash had been under consideration?      A. Yes.

Q. Would it be correct to say that, prior to August of this year, an effort was being made to effect the sale of the stock for cash?

A. Well, now, I wouldn't say an effort was being made. The thing was being talked about; it had natural attractiveness [611] at this time where the oil business was at a very high peak, values were high, and naturally the stock owned by the trust was situated in one equity and one oil company, and subject to all the hazards and all the benefits, naturally, of that oil business; and presuming that under such present economic conditions a good price could be gotten from a person who had the money, why, it was just the general idea that, if someone were available, a good price was to be gotten, and if arrangements could be made, then it would be a wise thing to sell out under the present advantageous economic situations.

Q. Could you tell me approximately how many conferences you participated in between sometime in August and the 4th day of October pertaining to the sale of this stock, or did you leave that to your attorneys?

A. I left the work to my attorneys, the actual—shall we say groundwork—but I was naturally in contact with them all the time and they were in

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of George Franklin Getty II.)

contact with Mr. Dockweiler and Mr. Hecht, and through those people with my father and various other parties, so it might be said that through my attorneys I was in contact with all parties, and how often I talked to my attorneys was—oh, I would say several times a week, all depending on what was in the fire.

Q. You did of course sign the agreement of October 4th? [612]           A. I did.

Q. In Los Angeles?

A. Yes; in Mr. Farrand's office, Pacific Southwest Building.

Q. At the time you signed it had anyone else signed it?

A. Yes; my father had signed it, my co-trustee, Thomas A. J. Dockweiler, the president and counsel of the Sunray Oil Corporation, Lloyd Gilmour, Mr. Lloyd Gilmour of Eastman, Dillon, and his counsel, and I was the last one to sign it.

Q. After the execution of the October 4th contract, was anything said to you concerning the execution of an amendment to the contract?

A. Several weeks later, I would say about the middle of October, my attorneys, talking to Mr. Hecht and Mr. Dockweiler, advised me that the plans which were formerly to merge four companies, namely, Pacific Western Oil Corporation, Mission Corporation, Skelly Oil Company, and Sunray Oil Corporation, had been changed to effect the same merger, but not include the Skelly Oil Com-

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of George Franklin Getty II.)

pany, and that, while it was not particularly necessary, it would be a good idea to enter into a supplemental agreement whereby all parties signed and showed their agreement to such a supplemental act.

Q. Did you sign the supplemental agreement?

A. I did.

Q. About when, if you can recall?

A. I would say about November 1st, 2nd, 3rd; somewhere in there.

Q. Somewhere in the early part of November?

A. Yes.

Q. That is, of course, this year? A. Yes.

Q. At the time the October 4th contract was signed, and before that, had you given any consideration to how Sunray might raise the necessary cash to pay for the stock?

A. Not particularly. I mean, that is always an interesting speculation in any part of any deal, but my interest in the arrangement was merely as a trustee of this majority stock interest in Pacific Western Oil Corporation, and then, having been offered a suitable price for it in cash, why, I was interested in seeing eventually that, if the deal went through, I got the cash for my stock; but how the cash was gotten together wasn't of too much importance to me, I mean, from the mechanical point of view.

Q. And therefore I take it that you did not concern yourself too much with that detail?

A. No.

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of George Franklin Getty II.)

Q. Was it brought to your attention at any time that [614] the corporation surviving this merger intended to sell the stock of Tide Water Associated Oil Company now owned by the Mission Corporation and Pacific Western Oil Corporation?

A. Yes.

Q. Was the price stated to you?

A. Yes; \$25 a share.

Q. Was that before you signed the contract, Mr. Getty, that that was brought to your attention?

A. I believe it was.

Q. Was it also brought to your attention that the surviving corporation intended to sell debentures or notes and to issue preferred stock to raise money?

A. Yes.

Q. Was that brought to your attention before or after the October 4th contract was signed?

A. I believe before.

Q. But I believe, as you said, you did not concern yourself with the details of it?

A. Not particularly.

Q. Were you informed as to what, if any, commissions might be payable in connection with the sale of the Tide Water stock and in connection with the sale of your stock as trustee in the consummation of the merger?

A. I had heard, and I cannot remember the source of this hearing, this information, that Mr. E. A. Parkford, having initially worked on the Tide Water sale—attempted [615] sale—was going to be

## Plaintiff's Exhibit No. 3—(Continued)

(Deposition of George Franklin Getty II.)

entitled to 50 cents a share commission on the stock sold by the surviving corporation to Tide Water, and naturally I was under the impression, just from a business point of view, that the services of Eastman, Dillon were not of—you know, in a charitable way, I mean—they got something for their services. I read in the paper the other day the actual figures.

Q. Was that the first time you knew them?

A. Yes.

Q. Have you seen a copy of the agreement of merger between the three companies which is dated, I believe, October 18, 1947?

A. Can you identify that document?

Q. That is attached to the bill of complaint in each of these cases as Exhibit "B."

A. No, I don't believe so. The complaint I got was a photostat copy and Exhibit "A." I think, the memorandum of agreement, was attached, but Exhibit "B" was unattached.

Q. You refer to it before the lawsuit. Have you ever seen it, then?      A. No.

Q. And today when it is exhibited to you is the first time you have seen it?      A. Yes. [616]

Q. Is it correct, Mr. Getty, that a meeting of the stockholders of Pacific Oil Corporation has been called for December 5th of this year?

A. Yes; that is what I have been informed.

Q. And that one of the purposes of that meeting is to vote upon the adoption of the proposed merger of the three companies?

A. That is what I have been informed.



Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of George Franklin Getty II.)

Q. Have you any present intention as to how you intend to vote your stock as trustee at that meeting?

A. I will vote my stock in favor of the merger.

Mr. Logan: That is all.

Mr. Fisher: No questions.

Mr. Sterry: No questions.

Mr. Boal: No questions.

Mr. Sterry: Gentlemen, a question was raised this morning in the discussion, in which it was stated that a summons and complaint had been served on Mr. Getty before any attempt at a subpoena.

I don't think he meant subpoena; I think he meant notice to take deposition.

However that may be, Mr. Getty is stating that he has been out of town, and I personally was out of town, and I don't know that we have any record as to when such service, if effective, was claimed to be effective, and therefore the date on which he should appear. I assume my office [617] has the time for the appearance of Pacific Western. Would it be satisfactory if we appear for Mr. Getty at the same time in which we make any appearance for Pacific Western?

Mr. Logan: I should think that would be a matter that would be entirely up to you, Mr. Sterry.

Mr. Hecht: Can you tell me when the service was effected? It was left at his home, and he was out of town, and he doesn't really know when it was effected.

## Plaintiff's Exhibit No. 3—(Continued)

(Deposition of George Franklin Getty II.)

Mr. Rinehart: That will be evidenced by the court records.

Mr. Sterry: The court has no record as to when you left it or when it was mailed. We intend to appear for Pacific Western this week. All I am asking you gentlemen, is it satisfactory if we appear at the same time for Paul Getty? I don't know what time the service was made or what time you claim you made it.

Mr. Logan: I think I see what you have in mind. If this answers your question, Mr. Sterry, the bill was not filed until the 4th of November, so if what you have in mind is answer time, it cannot possibly have expired.

Is that what you had in mind?

Mr. Sterry: That is right. That is what I had in mind.

I didn't want to trap you gentlemen in any way. I had forgotten the fact that it had not been filed before the 4th. [618]

Mr. Logan: That is right. Your answer time could not possibly have expired.

I would like to ask one more question of counsel here.

Could it be stipulated between us that this document that I hold here is a copy of Mission Corporation's notice of meeting and proxy statement?

I am not talking about the correctness of the statements therein contained, or anything else, but may we stipulate that that is the notice of meeting and proxy statement?

Plaintiff's Exhibit No. 3—(Continued)  
(Deposition of George Franklin Getty II.)

Mr. Boal: Is that one that was mailed to you?

Mr. Logan: No. Somebody gave that to me this morning here around the counsel table.

Mr. Hecht: I gave it to you. I can stipulate it is the one I gave to you.

Mr. Farrand: I will stipulate that, so far as trustee Getty is concerned, if the copy you had is the same as the copy that I had, and if the copy that I had, which was given to me by Mr. Boal, is a copy of the notice, then the copy I have and you have is a copy of the notice.

Mr. Logan: I am sorry I brought it up! Let it go! We can prove it otherwise.

/s/ GEORGE FRANKLIN  
GETTY II.

Witness. [619]

State of California,  
County of Los Angeles—ss.

I, W. L. Heathcote, a Notary Public for the County of Los Angeles, State of California, do hereby certify that Thomas A. J. Dockweiler and George Franklin Getty II were by me first severally sworn to testify the whole truth and that the above depositions by them respectively signed were recorded stenographically in my presence and under my personal direction by Robert H. Clark and Laura Breska, stenotypists, and by Herbert H. Bronck reduced to typewriting under my personal direction.

## Plaintiff's Exhibit No. 3—(Continued)

I further certify that the said depositions were respectively examined and read over by said deponents and were respectively signed by said deponents in my presence, having first made the following changes and corrections in the deposition of the deponent, Thomas A. J. Dockweiler, to wit:

On Page 8, line 23, change "Inc." to "Incorporated," as witness states George F. Getty, Inc., and George F. Getty, Incorporated, are two different corporations, and that he referred to the George F. Getty, Incorporated.

On page 10, line 9, "successor" should be "successors," this being a typographical error; page 10, line 17, "they" should be changed to "he," an obvious grammatical error; page 10, line 26, after the first word "Getty," add "the lawful issue of any deceased child of Mr. Getty," the [620] witness stating that the answer as appearing in the deposition was as he gave it, but that the above addition further clarifies and makes his answer more complete.

Page 13, line 23, the proper name "Grank" should be "Frank," an obvious typographical error.

Page 13, line 26, "1 th" should be changed to "17th," an obvious typographical error.

Page 20, line 20, change "Farrant" to "Far-rand," a typographical error.

Page 25, line 1, the question beginning on page 24, line 26, and ending on page 25, line 1, should have read: "Who first mentioned to you the possibility of selling this stock to Sunray Oil Corpora-

## Plaintiff's Exhibit No. 3—(Continued)

tion," as subsequent text will corroborate. This correction was made upon the responsibility of the Reporter at the suggestion of the deponent.

Page 25, line 5, change "direction" to "directly," presumably an error of the reporter not having heard the word correctly.

Page 26, line 20, change "Pettigrew" to "Petigrue," the name not having been spelled out for the reporter at the time the testimony was given; line 26, change "Splke" to "spoke," a typographical error.

Page 27, line 11, change "Pettigrew" to "Petigrue," the correct spelling not having been given to the reporter by the witness. [621]

Page 29, line 22, change "Shekly" to "Skelly," a typographical misspelling of the name.

Page 30, line 19, after the word "his" insert parenthetically "Mr. Farrand's," this addition being made for sake of clarity and to designate that the document was signed in Mr. Farrand's office and not Mr. Getty's office.

Page 37, line 22, change the first "it" to "I," this being an obvious typographical error corrected by the reporter.

Page 43, line 9, after the word "done," eliminate the comma and insert "to certain of the directors," the witness stating he could not vouch as to all of the directors; line 13, after the word "at," insert "one or more of," and after the word "conferences" add "or gatherings," the witness stating that "one or more" of their conferences would be more nearly



## Plaintiff's Exhibit No. 3—(Continued)

correct than the assumption that it was at all of the conferences, and witness further stating that they might be more properly called gatherings than conferences, in the strict sense of the word; line 17, after the word "Williams," insert "each probably had a copy," to indicate that the three men in question were each in possession of a copy rather than possessing one copy only and that jointly; line 21, after the word "conference" add "or talking," indicating that it might be less formal than a conference; line 26, change "10th" to "17th," the latter being obviously correct, according to the [622] witness and the error probably being typographical.

Page 46, line 16, change "Sunday" to "Sunray," this being a typographical error; line 23, change "must" to "may," the witness stating this more correctly reflects the intent of his statement; line 24, after the word "signed," add a comma, and also "or later," the amplification made by the witness for the sake of clarity and correctness.

Page 49, line 9, delete the word "that," the same being grammatically incorrect.

Page 51, line 23, after the word "I," insert the word "May," this modification the witness stating more correctly reflects the intent of his testimony.

Page 58, line 15, change "meeger" to "merger," an obvious typographical misspelling.

I further certify that the said depositions, as above amended, changed and corrected, constitute a true record of the testimony given by each of said witnesses.

## Plaintiff's Exhibit No. 3—(Continued)

I further certify that the said depositions were taken at the time and place specified in the annexed notice, and that the taking of the said depositions commenced on the 15th day of November, 1947, at 9:00 o'clock in the morning and was completed at 2:30 o'clock in the afternoon of said day.

I further certify that Villard Martin, Esq., Garrett Logan, Esq., Theodore Rinehart, Esq., and Harold C. Stuart, [623] Esq., of the City of Tulsa, State of Oklahoma, appeared as attorneys for the plaintiff, and Arthur M. Boal, Esq., of the City of New York, State of New York, and Lester D. Summerfield, Esq., and Robert C. Hawkins, of the City of Reno, State of Nevada, appeared as attorneys for the defendant.

I further certify that neither I nor the said Robert H. Clark nor Laura Breska, reporters, is an attorney or counsel of any of the parties, or is a relative or employee of any attorney or counsel connected with the action, or is financially interested in the action.

[Seal]                    /s/ W. L. HEATHCOTE,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires September 15, 1951.

[Endorsed]: Filed Nov. 21, 1947.

In the District Court of the United States  
for the District of Nevada

No. 669

WILLIAM G. SKELLY,

Plaintiff,

vs.

MISSION CORPORATION, a Corporation,  
Defendant.

CERTIFICATE OF CLERK  
U. S. DISTRICT COURT

United States of America,  
District of Nevada—ss.

I, Amos P. Dickey, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of William G. Skelly, Plaintiff, vs. Mission Corporation, a corporation, Defendant, No. 669 on the civil docket of said Court.

I further certify that the attached transcript, consisting of 722 typewritten and printed pages numbered from 1 to 722, inclusive, contains the portion of the record under Rule 75, subdivision J, of the Federal Rules of Civil Procedure, as requested by appellant, together with the endorsements of filing thereon, and as set forth in "Desig-

nation of Record on Appeal" filed herein by appellant and defendant on December 8, 1947, which is filed herein and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

I further certify that the cost of preparing and certifying to said record, amounting to \$300.80, has been paid to me by Hawkins, Rhodes & Hawkins, one of the firms of attorneys for Appellant and Defendant. [721]

Witness my hand and the seal of said United States District Court this 9th day of December, 1947.

[Seal]        /s/ AMOS P. DICKEY,

Clerk, U. S. District Court,

By /s/ O. F. PRATT,

Deputy.

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[Endorsed]: No. 11809. United States Circuit Court of Appeals for the Ninth Circuit. Mission Corporation, a corporation, Appellant, vs. William G. Skelly, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the District of Nevada.

Filed December 9, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11809

MISSION CORPORATION,

Appellant,

vs.

WILLIAM G. SKELLY,

Appellee.

Appeal from the District Court of the United States  
for the District of Nevada

ORDER

Appellant's "application for order suspending interlocutory injunction pending an appeal from the granting thereof" is hereby denied.

/s/ CLIFTON MATHEWS,

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE,

United States Circuit Judges.

[Endorsed]: Filed Dec. 12, 1947.



United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11809

MISSION CORPORATION, a Corporation,  
Appellant and Defendant,

*et al.*

vs.

WILLIAM G. SKELLY,

Appellee and Plaintiff.

*et al.*

STATEMENT OF POINTS UPON WHICH AP-  
PELLANT RELIES AND DESIGNATION  
OF PARTS OF RECORD NECESSARY  
FOR CONSIDERATION

I.

Appellant, Mission Corporation, pursuant to Sub-  
division 6, Rule 19 of Rules of the United States  
Circuit Court of Appeals for the Ninth Circuit,  
makes and files the following statement of the points  
upon which it relies on this appeal, namely:

1. The court erred in not dismissing the action  
for failure of the appellee's complaint to state a  
claim within the jurisdictional amount of the court.

2. The court erred in not dismissing the action  
for failure of the appellee's complaint to state a  
claim upon which relief can be granted.

3. The court erred in ruling that the directors'  
meeting of Mission Corporation held on October 18,  
1947, and the resolution adopted at such meeting  
approving the agreement of merger, were nullities.

4. The court erred in granting a preliminary injunction restraining the appellant Mission Corporation, from holding on December 6, 1947, or at any other time, a stockholders' meeting to consider and vote upon the said agreement of merger considered and acted upon by the appellant's Board of Directors on October 18, 1947, and further restraining the said appellant from proceeding further with said proposed merger.

5. The court erred in holding that Directors Kluth, Williams and Staples were disqualified, by reason of financial interest, from approving and signing the agreement of merger considered by the Board of Directors at its meeting on October 18, 1947.

6. The court erred in holding that Directors Kluth, Williams and Staples were influenced and controlled by Director Thomas A. J. Dockweiler.

7. The court erred in holding that the principal interest and purpose of Director Thomas A. J. Dockweiler on October 18, 1947, or at any time throughout the negotiation of said proposed merger, was to bring about the sale of stock of Pacific Western Oil Corporation owned by the Getty Interests for \$68.00 per share.

8. The court erred in holding that the ratios of exchange for Pacific stock and the stock of the Remaining Stockholders of Mission provided for in the proposed merger agreement, were unequal or were arrived at without an appraisal of the constituent companies by an independent appraiser.

## II.

Appellant, Mission Corporation, designates the parts of the record which it thinks necessary for consideration on the foregoing appeal, namely:

1. Motion to Dismiss
2. Amended Complaint (and All Exhibits)
3. Answer to Amended Complaint
4. Answers to Plaintiff's Interrogatories (includes both questions and answers)

5. Affidavits, including exhibits thereto attached, filed on behalf of the plaintiff, William G. Skelly, as follows:

- (a) Affidavit of Achtschin, Leo A.
- (b) Affidavit of Herndon, Chesley C.
- (c) Affidavit of Hyden, Arch H.
- (d) Affidavit of Skelly, William G., including letter of John P. Thatcher and telegram of Burton K. Wheeler.
- (e) Affidavit of Stuart, Harold C.

6. Affidavits, including exhibits thereto attached, filed on behalf of the defendant, Mission Corporation, as follows:

- (a) Dockweiler, Thomas A. J.
- (b) Hammer, George A.
- (c) Kluth, Emil
- (d) Kravis, Raymond F.
- (e) Kroupa, J.
- (f) Krug, Charles F.
- (g) Layton, Caleb S.
- (h) Schimpff, Charles H.
- (i) Staples, David T.

(A printed copy of Mission Corporation Notice of Meeting and Proxy Statement was annexed to and made a part of the Staples affidavit. It is omitted from the record designated to be printed as it is again included under Topic 7 (a) as "Plaintiff's Exhibit No. 1 in evidence." Appellant respectfully suggests that actual printed copies of the Mission Corporation Notice of Meeting and Proxy Statement and Sunray Oil Corporation Notice of Meeting and Proxy Statement herein-after designated under Topic 8 (a), be considered in lieu of having these documents reprinted as a part of the record before the court.)

- (j) Wasson, Harold J.
- (k) Wright, Clarence H.
- (l) Williams, Fero

7. Exhibits submitted in evidence by the plaintiff as follows:

- (a) Plaintiff's Exhibit No. 1—Notice of Meeting and Proxy Statement of Mission Corporation marked by plaintiff's counsel.

(Appellant respectfully suggests that it be permitted to furnish the Clerk with 60 printed copies of the Mission Corporation Notice of Meeting and Proxy Statement, such copies to be marked identical with those included in the original certified record, and that they be accepted in lieu of having this document reprinted as a part of the record before the court.)

The items and pages are marked on the Clerk's copy as follows:

Item	Page	Item	Page
1	3	7	8
2	3	9	15
3	4	10	26
4	5	11	27
5	6	12	27
6	7	14	10

(b) Plaintiff's Exhibit No. 2—Minutes of Special Meeting of October 18, 1947, of Mission Corporation with letter signed by Bob Hawkins to W. G. Skelly.

(c) Plaintiff's Exhibit No. 3—Depositions of Thomas A. J. Dockweiler and George Franklin Getty II.

8. Exhibit submitted in evidence by the defendant as follows:

(a) Defendant's Exhibit No. A—Notice of Meeting and Proxy Statement of Sunray Oil Corporation.

(Appellant respectfully suggests that it be permitted to furnish the Clerk with 60 printed copies of the Sunray Oil Corp. Notice of Meeting and Proxy Statement, and that they be accepted in lieu of having this document reprinted as a part of the record before the court.)

9. Order and Findings on Application for Preliminary Injunction.

10. Motion for Supersedeas.



11. Order denying Motion for Supersedeas.
12. Notice of Appeal to Circuit Court of Appeals.
13. Bond for Costs on Appeal.
14. Certificate of Clerk, U. S. District Court.
15. This "Statement of Points Upon Which Appellant Relies and Designation of Parts of Record Necessary for Consideration."

Respectfully submitted by the undersigned attorneys for appellant and defendant Mission Corporation.

HAWKINS, RHODES &  
HAWKINS,  
/s/ ROBERT Z. HAWKINS.

By /s/ LESTER D. SUMMERFIELD.  
ESQ.,  
THOMPKINS, BOAL &  
TOMPKINS,  
ARTHUR M. BOAL, Esq.,

By /s/ ROBERT Z. HAWKINS.

Service of the Above and Foregoing, by copy, is acknowledged this 29th day of January, 1948.

WILLIAM G. SKELLY,  
By /s/ WM. J. FORMAN,  
Of Counsel for Appellee and  
Plaintiff.

[Endorsed]: Filed January 30, 1948.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLEE OF  
ADDITIONAL PARTS OF RECORD

Appellee, William G. Skelly, through his counsel, designates the following additional portions of the Record and proceedings which he deems necessary to be contained in the Record of Appeal in this action:

1. Pages 16-29 of the Court Reporter's transcript of proceedings in the United States District Court, District of Nevada. (The pages referred to are as numbered in Designation of Appellee, as filed with the Clerk of the Circuit Court of Appeals December 10, 1947);

2. Pages 2, 3, 6 and 7 of Exhibit "C-1" to Plaintiff's Exhibit 1, being the balance sheet of Sunray Oil Corporation as of December 31, 1946, with notes thereto;

3. Pages 2, 3 and 4 of Exhibit "D-1" to Plaintiff's Exhibit 1, being the balance sheet of Pacific Western Oil Corporation and subsidiary company, as of December 31, 1946, with notes thereto;

4. Pages 2 and 3 of Exhibit "E-1" to Plaintiff's Exhibit 1, being the balance sheet of Mission Corporation as of December 31, 1946, with notes thereto;

5. Pages 2 and 3 of Exhibit "G" to Plaintiff's Exhibit 1, being the pro forma condensed consolidated balance sheet of Sunray Oil Corporation and wholly owned subsidiary, with notes thereto;

6. Order fixing time for hearing Application for Temporary Injunction (Page 25 of Appellant's original certified record as shown by Clerk's Index);

7. Bond for Temporary Injunction (Pages 705-707 of Appellant's original certified record as shown by Clerk's Index);

8. Appellant's Original Designation of Record (Pages 714-720 of Appellant's original certified record as shown by Clerk's Index);

9. Original "Designation of Appellee," Pages 1-3, as filed with the Clerk of the Circuit Court of Appeals December 10, 1947;

10. This "Designation by Appellee of Additional Parts of Record."

/s/ HERBERT W. CLARK,

/s/ JOHN P. THATCHER,

/s/ WILLIAM FORMAN,

/s/ VILLARD MARTIN,

/s/ GARRET LOGAN,

/s/ THEODORE RINEHART.

/s/ HAROLD C. STUART,

Attorneys for Appellee and Plaintiff, William G. Skelly

Service of a copy of the foregoing additional Designation of Record and Proceedings on Appeal acknowledged this.....day of February, 1948.

.....  
Attorneys for Appellant and Defendant, Mission Corporation.

[Endorsed]: Filed February 9, 1948.

